

IN THE APPELLATE TRIBUNAL

ANGLICAN CHURCH OF AUSTRALIA

IN THE MATTER OF questions referred by the Primate under section 63 (1) of the Constitution

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

SUBMISSIONS OF THE REVEREND ASSOCIATE PROFESSOR MATTHEW ANSTEY¹

1. The appropriateness of the questions referred

- 1.1 As to the original reference by the Primate of 10 October 2019 of two questions pursuant to section 63(1) of the Constitution, it is respectfully submitted that the Diocese of Wangaratta is incorrect in asserting in its *Primary Submissions* that the first question does not constitute, or is not capable of constituting, a "question [which] arises under this Constitution".
- 1.2 Section 51 of the Constitution imposes a limitation on the power of the Synod of a Diocese to pass legislation inconsistent with the Constitution. This follows from the express words of section 51. Section 51 provides that the legislative power of a Diocese is "*Subject to this Constitution...*". These are words of limitation. If Diocesan legislation, or some aspect of it, is inconsistent with the Constitution it must be invalid to the extent of that inconsistency.
- 1.3 However, a difficulty arises with the first question. It asks whether the *Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019* is consistent with the Fundamental Declarations and Ruling Principles. The question should more appropriately have been expressed as: "*Is it inconsistent with the Fundamental Declarations and Ruling Principles?*".
- 1.4 This follows from the fact that the presumption of legislative validity places the onus firmly on those opposing the validity of the *Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019* to make out their case. A Diocese has power to legislate for the "*order and good government*" of the Church in its Diocese. These are expansive words, limited only by the terms of the Constitution (i.e., section 51). Any legislation passed by a Diocesan Synod must be presumed to be for the "*order and good government*" of the Diocese. As such, consistent with the opening words of Section 51, any question of validity can only be determined by whether the legislation is inconsistent with the Constitution. If it is not inconsistent, it must otherwise be valid. This approach also mirrors the language of section 29(4) of the Constitution. Further, it is the only logical way in which section 4 of the Constitution can be applied,

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particularly having regard to the language of the second to fourth Provisos which talk in terms of “*variations*” to or “*deviations*” from the Ruling Principles.

- 1.5 Accordingly, the Diocese of Wangaratta is, with respect, correct when it says at paragraph 23 of its *Primary Submissions* that any limitation on the power of a Diocesan Synod to legislate on a matter which might conceivably be touched upon by the Fundamental Declarations or Ruling Principles must be assessed by whether that legislation is inconsistent with the Fundamental Declarations or Ruling Principles. The opponents of the legislation bear the burden of establishing that inconsistency.
- 1.6 Whilst, for the reasons given, the first question – perhaps modified in the manner suggested – does give rise to a question arising under the Constitution, the second does not. The question as to whether Diocesan legislation is or is not authorised – i.e., validly made – pursuant to a Canon of General Synod is simply not a matter arising under the Constitution.
- 1.7 This is not to say that the *Canon Concerning Services 1992* (as currently in force in the Diocese of Wangaratta and not being the subject of any constitutional challenge in this Tribunal pursuant to section 29 of the Constitution) is of no relevance. Section 5(3) of that Canon requires that any form of service used within a Diocese “*be reverent and edifying and must not be contrary to or a departure from the doctrine of this Church*”. However, no question is posed of the Appellate Tribunal in this regard and probably none could be posed. In particular, no question is posed – and again none could be – as to whether the *Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019* is a “*departure from the doctrine of this Church*” in terms of section 5(3) of the *Canon Concerning Services 1992*. It is submitted that the Appellate Tribunal has no jurisdiction to determine that question even had it been put. *First*, that question is for the Bishop of the Diocese in question, not the Appellate Tribunal nor anyone else (section 5(4)). *Secondly*, it is not the role of the Appellate Tribunal to enter into a highly charged debate over “*doctrine*” where there are competing, and legitimate, bodies of theological opinion.
- 1.8 Moreover, were the Appellate Tribunal to determine that the *Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019* is inconsistent with the Fundamental Declarations and Ruling Principles, there would be no necessity to answer the second question.
- 1.9 However, to the extent that it is necessary for the Appellate Tribunal to consider the relationship between the *Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019* and the *Canon Concerning Services 1992*, section 5(2) of that Canon is not a source of legislative power exercisable by the Synod of the Diocese of Wangaratta. The opening words of section 5(2) of the *Canon Concerning Services 1992* are words of limitation, not empowerment. What is envisaged by section 5(2) is that a Synod may proscribe the use of a particular form of service, not authorize something new. In the absence of specific proscription, a minister is free to use any form of service considered by them to be “*suitable*” subject to there being no other form of service provided and that service being “*reverent and edifying and ... not ... contrary to or a departure from the doctrine of this Church*”: see section 5(3) of the *Canon Concerning Services 1992*.
- 1.10 In this sense, there was no necessity at all for the Synod of the Diocese of Wangaratta to pass the *Blessing of Persons Married According to the Marriage Act 1961*

Regulations 2019. It may, instead, have been a matter for individual clergy of the Diocese, subject to the oversight of the Bishop, to determine what they may or may not do in relation to the Blessing of a civil union: see section 5(2) of the *Canon Concerning Services 1992*.

- 1.11 Any failure to comply with section 5(3) of the *Canon Concerning Services 1992* might then be a matter of discipline within the Diocese (or, in the case of the Bishop who incorrectly determines that a particular form of worship does not contravene section 5(3), by the Special Tribunal), but these are not matters arising under the Constitution which would warrant the intervention of the Appellate Tribunal, at least at first instance.
- 1.12 This is not to say that the *Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019* is invalid as lacking a source of power. Clearly, it was within the power of the Synod of the Diocese of Wangaratta to pass this legislation “for the order and good government of this Church” within its Diocese. As such, there was no need to rely upon the *Canon Concerning Services 1992*. That said, the legislative power of the Synod of the Diocese of Wangaratta remains, and always remains, subject to section 51 of the Constitution.
- 1.13 In summary, only the first of the two questions referred pursuant to 63 of the Constitution on 10 October 2019 should be answered. However, the question should be posed in terms of *inconsistency*, not *consistency*, with the Fundamental Declarations or Ruling Principles.
- 1.14 As to the three questions referred by the Primate on 21 October 2019 pursuant to 63 of the Constitution, the first question regarding the “*use of the form of service at Appendix A to the Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019*” does not raise a question under the Constitution. For the reasons previously given, the only justiciable question is whether the *Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019* is inconsistent with the Fundamental Declarations and Ruling Principles. The same objection applies in relation to the second question. That question is also flawed in advancing a hypothetical scenario disconnected from any particular form of service. The Appellate Tribunal should not answer it. In relation to the third question, it is even more remote from a question arising under the Constitution and should not be answered. *First*, the *Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019* does not, or ought not, depend for its validity on the *Canon Concerning Services 1992*, being authorized by section 51 of the Constitution, subject only to not being inconsistent with the Fundamental Declarations and Ruling Principles. *Secondly*, whether or not Diocesan legislation is consistent or inconsistent with a General Synod Canon is not a matter arising under the Constitution. The only legitimate test of inconsistency is with the Constitution.

2. The Fundamental Declarations and Ruling Principles

- 2.1 On the assumption that the Appellate Tribunal decides that it has jurisdiction in the matter, then effectively the one question arises, possibly paraphrased as such: “*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 inconsistent with the Fundamental Declarations and Ruling Principles in the Constitution of the Anglican Church of Australia*”.

- 2.2 These submissions now address that question.
- 2.3 The question of inconsistency assumes that there exists, within the Fundamental Declarations and Ruling Principles, some statement, form or rule inconsistent with the subject matter of the *Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019*.
- 2.4 However, the *Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019* does not address, and is not concerned with, a ceremony of marriage as might be conducted, and blessed, by a bishop, priest or deacon of the Anglican Church in the form of an approved Anglican service. Its focus is civil marriage, i.e., marriage specifically outside the Anglican Church, the Book of Common Prayer, An Australian Prayer Book and A Prayer Book for Australia. There is nothing in these or the Fundamental Declarations or Ruling Principles with which the *Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019* can be in conflict as none are concerned, in any way, with civil marriage.
- 2.5 If, nevertheless, the Appellate Tribunal were minded to consider whether in a service of blessing of same-sex marriage, the officiating minister, acting as a public representative of the Anglican Church of Australia, is providing in principle support for same-sex marriage *eo ipso*, then the following further submissions are relevant.
- 2.6 The central objection raised by opponents of “*the blessing of same-sex marriage*” lies not in the act of blessing, but in the implication that *that which is being blessed*, namely, same-sex marriage, is in this public liturgy being deemed to be not inconsistent with the Fundamental Declarations or Ruling Principles.
- 2.7 It would not be unreasonable, in other words, for a member of the public attending such a service to infer that the Anglican Church of Australia *approves of same-sex marriage* as a form of human relationship not inconsistent with the Fundamental Declarations or Ruling Principles, because the efficacy of the divine blessing would be perceived to be “*underwritten*” as it were by the fact that the minister is declaring God’s blessing *in his or her capacity as* an ordained priest in the Anglican Church of Australia. One might consider this a “*common sense*” inference.
- 2.8 To put it in another way, it would be incongruous for a member of the public to attend such a service and then be informed afterwards by the officiating minister that the Anglican Church of Australia in fact *opposes* same-sex marriage but is nevertheless willing and able to bless such a relationship. Such a disjunction is too acute to be elided by considering blessing minus its *raison d’être*.
- 2.9 Furthermore, opponents of the blessing of same-sex marriage do indeed assert that same-sex marriage *is* inconsistent with the Fundamental Declarations or Ruling Principles.
- 2.10 It might therefore be said that it is neither preferable nor indeed plausible to separate the doctrine of blessing from the doctrine of that which is being blessed. For as is argued elsewhere, “*if the heart of God rejoices in same-sex marriage wholeheartedly, then blessing and liturgical recognition of such will follow as night follows day*”.²

² M. Anstey, 2019, “*The Case for Same-Sex Marriage*” in *Marriage, Same-Sex Marriage and The Anglican Church of Australia: Essays From the Doctrine Commission* (Mulgrave: Broughton Publishing), 267. This book is EDC hereafter.

- 2.11 It is further submitted that the question of same-sex *marriage* cannot be side-stepped in any defensible manner by considering instead same-sex *union*, because the central concern for those opposed to any form of same-sex intimate relationship is, to put it bluntly, the issue of same-sex sexual relations.³
- 2.12 It is appropriate, therefore, to submit to the Appellate Tribunal arguments for the contrary position, namely, that same-sex marriage itself is not inconsistent with the Fundamental Declarations or Ruling Principles.

3. The Fundamental Declarations

- 3.1 The Fundamental Declarations are of a different nature to the Ruling Principles, having a higher precedence, given that Section 4 of the Constitution grants the Church “*plenary authority at its own discretion to make statements as to the faith... provided that all such statements...are consistent with the Fundamental Declarations contained herein*” and Section 29(10) allows for a Canon “*to alter the Ruling Principles*”. Hence the question of inconsistency must be addressed separately for each.⁴
- 3.2 Section 1 establishes the Nicene Creed and Apostle’s Creed as “*the Christian Faith as professed by the Church*”. These two ecumenical creeds profess what the Church always has and always will assert to be the core beliefs of the Christian faith. They are unalterable statements (the *filioque* notwithstanding!) and set the clearest demarcation of what is and what is not Christian faith.
- 3.3 Section 2 asserts the unique and particular place the Scriptures have within our Church, focusing on “*ultimate*” matters and on that which is “*necessary for salvation*”.
- 3.4 Section 3 asserts the unique and particular place of Christ and Christ’s commands, doctrine, sacraments and discipline, and the three orders of bishops, priests and deacons in the sacred ministry.
- 3.5 The Fundamental Declarations, and the two Creeds referred to therein, make no statements asserting any moral or ethical absolutes, norms or precepts. Not even is the ultimate injunction, “*love one another*”, declared as a credal statement.
- 3.6 The Constitution wisely leaves to the Church the task of ongoing consideration of determination of the doctrines concerning moral precepts regarding particular matters, given that the Church is always in a process of discerning as it were “*the commands and doctrines of Christ*” in response to the increase in knowledge about and understandings of Scripture itself (such as the insight provided by the Dead Seas Scrolls), science (such as cosmology, evolutionary theory, psychology, biology, and sociology), technological inventions and advances (such as the contraceptive pill, IVF, the Internet), and changes in the culture and world (such as climate change) in which we live. How the Church does consider such matters in general and same-sex marriage in particular is discussed in detail in section 5 below.

³ In other words, only those who do not see homosexual practice as sinful are concerned with further discussion as to whether the church should understand monogamous same-sex relationships as an equivalent form of holy matrimony, or as an alternative, particular form of Christian marriage (my view), or covenantal union (such as advocated by Robert Song, 2014, *Covenant and Calling: Towards a Theology of Same-Sex Relationships* [London: SCM Press]).

⁴ M. Stead, 2019, “*The Doctrine of Marriage of the Anglican Church of Australia*” in EDC expresses this distinction through use of the terms “*Level 1 doctrine*” and “*Level 2 doctrine*” respectively.

- 3.7 The linguistic forms of credal, fundamental assertions vis-à-vis moral doctrinal statements reflect this distinction. One can observe that credal statements are of the form, *“The Church believes that God is creator of heaven and earth”*, *“The Church believes that Jesus Christ is the Son of God”*, *“The Church believes that Jesus rose from the dead”* and so forth. They are timeless, universal assertions about the nature of God and God’s creation, statements the Church can declare as doctrines that are *“necessary for salvation”*. In contrast, moral doctrinal statements are of the form (or can be expressed as such): *“The Church believes that adultery is wrong”*, *“The Church believes that slavery is right”*, *“The Church believes that active euthanasia is contrary to God’s will”* and so forth.
- 3.8 This does not entail that the doctrine of same-sex marriage is either morally right or morally wrong; rather, it entails that the doctrine of same-sex marriage, being in the form, *“The Church believes that same-sex marriage is morally right/wrong”*, belongs to that category of doctrines about which the Church refrains from categorizing as *“necessary for salvation”*.
- 3.9 Suppose, however, for the sake of argument that moral doctrinal statements were in fact doctrines necessary for salvation. Indeed, such an argument is made by some opponents of same-sex marriage on the basis of 1 Corinthians 6:9-10: *“Do you not know that wrongdoers will not inherit the kingdom of God? Do not be deceived! Fornicators, idolaters, adulterers, male prostitutes, sodomites, thieves, the greedy, drunkards, revilers, robbers—none of these will inherit the kingdom of God”*. Would the Anglican Church of Australia determine that *“The Church believes that theft is morally wrong”* or *“The Church believes that drunkenness is morally wrong”* are doctrines necessary for salvation? No, because our Constitution excludes such moral doctrines from the scope of doctrine as defined in the Fundamental Declarations.
- 3.10 Thus a doctrine of same-sex marriage is not inconsistent with the Fundamental Declarations.

4. The Ruling Principles

- 4.1 Section 4 of the Constitution stipulates that *“no alteration in or permitted variations from the services or Articles therein [that is, in the Book of Common Prayer, together with the Thirty-nine Articles] contained shall contravene any principle of doctrine or worship laid down in such standard”*.
- 4.2 Given that homosexual marriage was not a legal option at the time of the writing of the BCP, and given it is reasonable to assume that the possibility of same-sex marriage was not countenanced by the authors, the BCP doctrine of marriage and the rationale provided to support it should be taken as pertaining only to heterosexual marriage.
- 4.3 Interpreting the BCP in this way is in accord with previous arguments of the Appellate Tribunal, such as are seen in the determination *“Admission of Women to Holy Orders re Prayer Book Usage”* (14 August 1985). In discussing the scope of the *“maleness’ of the Ordinal”* (as it appears in the BCP) the following legal argument was made:
- 4.3.1 *“It is necessary to bear in mind that the question whether the ‘maleness’ of the Ordinal expresses a doctrine or principle ... is to be determined according to the understanding or intention of those who compiled and promulgated the Ordinal. The Ordinal like any other document must be interpreted as at*

its own date. It should be given the same meaning today as it would have been given at the time when it received statutory effect in the sixteenth and seventeenth centuries. Thus in Shore v. Wilson (1842) 8 E.R. 450 at 533 Tindal C.J. spoke of ‘The true interpretation ... of every instrument being manifestly that which will make the instrument speak the intention of the party at the time it was made...’.

- 4.4 Similarly, the limitation offered in the BCP liturgy that the only allowable marriages are ones that ‘*God’s Word doth allow*’ does not resolve the issue because the lack of agreement by committed, faithful Anglican scholars and theologians on what God’s Word allows with respect to same-sex marriage (and *mutatis mutandis* same-sex blessing and same-sex union) is central to this referral.⁵
- 4.5 Thus there is no principle or doctrine embodied in the formularies with respect to the doctrine of same-sex marriage that would be inconsistent with the Ruling Principles.

5. The significance of the question of same-sex marriage

- 5.1 As is argued above in 2.5-2.10, the central theological issue before the Tribunal is same-sex marriage, not the blessing of such. And as noted in 1.7 and 4.4 above, there exist fundamental disagreements within the Anglican Church of Australia on whether same-sex marriage is doctrinally and morally in accord with the mind of Christ. This is self-evident.
- 5.2 Same-sex marriage is clearly a monumentally important issue, evidenced by the statements *inter alia* of Gafcon. Gafcon is a schismatic group of Anglicans not in any formal relationship with the Anglican Church of Australia nor the Archbishop of Canterbury.⁶ Yet a number of bishops, clergy and laity of the Anglican Church of Australia are members of Gafcon, hold formal positions in its structures, and openly promote its agenda. They provide leadership to Gafcon internationally in many forms. According to Gafcon, the issue of same-sex marriage has led to “*a tear in the fabric of the Anglican Communion*” and many Gafcon members are so emboldened as to accuse those who support same-sex marriage as “*apostate*”.⁷

⁵ As evidenced in the disagreements in EDC.

⁶ Gafcon however no longer deems recognition by an official institution as a criterion for ‘*Anglican identity*’: “*While acknowledging the nature of Canterbury as an historic see, we do not accept that Anglican identity is determined necessarily through recognition by the Archbishop of Canterbury*” (Peter Jensen, 25 May 2018), accessed from <https://www.gafcon.org/news/the-anglican-church-in-brazil-and-the-anglican-communion> 9 Dec 2019.

Similarly, the Gafcon Primates’ Council, held in Sydney, Australia – April 29, 2019 – May 2, 2019 passed this motion: “*With the Anglican Church of Aotearoa, New Zealand and Polynesia’s recent General Synod decision to permit the blessing of same-sex marriages and civil unions we give thanks for the individuals and churches that have remained faithful and courageous in these islands. We support those who, in good conscience, feel unable to remain within a Church that has made such a decision. We affirmed their creating a new diocese and recognised them as authentically Anglican. This new diocese will keep them within the Anglican Communion and they will relate directly to Gafcon. We also affirmed the consecration of a new bishop to oversee and support the new diocese*” (emphasis added), accessed from <https://www.gafcon.org/news/a-communicue-from-the-gafcon-primates-council>, 9 Dec 2019.

⁷ For example, Jay Behan (<https://www.thepastorsheart.net/podcast/2019/5/14/leaving-gracefully-from-an-apostate-denomination>). Nine Australian bishops participated in the consecration of Jay Behan to a new Gafcon denomination: Glenn Davies, Richard Condie, Gary Nelson, Rick Lewers, Peter Jensen, Paul Barnett, Michael Stead, Peter Lin, and Chris Edwards. Both this and Glenn Davies’ 2019 “*Please Leave Us*” Synod Speech caused grief and dismay from Anglicans across Australia and New Zealand (see <https://www.theguardian.com/commentisfree/2019/oct/17/im-gay-married-and-not-leaving-my-church>, <https://www.smh.com.au/national/even-conservative-rectors-shuddered-why-sydney-archbishop-s-words-hurt-20191018-p531ye.html>, <https://queervangelical.com/2019/10/24/this-is-not-the-first-time-ive-been-asked-to-leave-my-church/>, https://www.anglicantaonga.org.nz/news/common_life/boundaries,

- 5.3 Those in favour of same-sex marriage, in response to such claims, are not willing to let these accusations go uncontested, accusations such that supporters of same-sex marriage are “apostate”, “defected from the Christian faith”,⁸ “abandoning Scripture”, “unfaithful to the gospel”, holding views that are “a virus in the national Church, caused by not teaching properly the word of God”,⁹ and the like. Not only are proponents of same-sex marriage confident of the theological orthodoxy and Scriptural foundation of their position, they believe that the view that same-sex marriage is a moral good is in accord with leading medical,¹⁰ psychological,¹¹ and other relevant scientific research,¹² sources of knowledge and wisdom that have always been deeply influential in the Church’s determination of its views on moral matters.¹³
- 5.4 There has been no shortage of equally monumental debates in the history of the Church. It took the Church 400 years or thereabouts to settle on its credal affirmations on the Trinitarian nature of God, 1,500 years for the idea that salvation is the free gift of God to become front and centre to the Church’s understanding of redemption; it took the Church 1,900 years to discern that slavery is nowhere and never the will of God and 1,950 years to assert the full equality of men and women, notwithstanding that we still must struggle with these issues today in many places. Clearly, the fact that the Church has held a moral position for a long period of time is no guarantee that that position is correct.
- 5.5 Should the Appellate Tribunal therefore choose to consider the doctrine of same-sex marriage in relation to their determination, we submit the following line of argument to defend the position that God approves unconditionally of same-sex marriage.

6. The Interpretation of Scripture and Same-sex Marriage

- 6.1 The process of discernment, re-evaluation, and regular change with respect to the Church’s doctrine on moral issues has taken place across the entire history of the Church, as seen in issues such as anti-Semitism, slavery, capital punishment, polygamy, inter-racial marriage, sex during pregnancy, remarriage of divorced

<https://www.smh.com.au/national/archbishop-accused-of-trying-to-split-anglican-church-over-same-sex-marriage-20191016-p5318r.html>, <https://www.theguardian.com/world/2019/oct/17/anglican-churches-reject-sydney-archbishops-stance-on-same-sex-marriage>, <http://humanecatholic.blogspot.com/2019/10/melbourne-synod-2019-and-beyond.html>, <https://www.sjks.org.au/wp-content/uploads/2019/10/Sempell-response-to-the-2019-Synod-Charge.pdf>).

⁸ Bishop Rob Forsyth, <https://www.facebook.com/davidould/posts/10157568380442649>. Accessed 9 Dec 2019.

⁹ Bishop Glenn Davies, <https://www.thepastorsheart.net/podcast/2019/9/17/archbishop-davies-on-public-christian-leadership>. Accessed 9 Dec 2019.

¹⁰ The Australian Medical Association (<https://ama.com.au/position-statement/marriage-equality-2017>). Accessed 10 Dec 2019.

¹¹ The American Psychological Association states: “No, lesbian, gay and bisexual orientations are not disorders. Research has found no inherent association between any of these sexual orientations and psychopathology. Both heterosexual behavior and homosexual behavior are normal aspects of human sexuality. Both have been documented in many different cultures and historical eras. Despite the persistence of stereotypes that portray lesbian, gay and bisexual people as disturbed, several decades of research and clinical experience have led all mainstream medical and mental health organizations in this country to conclude that these orientations represent normal forms of human experience. Lesbian, gay and bisexual relationships are normal forms of human bonding” (<https://www.apa.org/topics/lgbt/orientation>). Accessed 10 Dec 2019

¹² For example, on sexual minority parenting: N. Gartrell, E. D. Rothblum, A. S. Koh, G. van Beusekom and H. Bos, 2019, “We Were Among the First Non-traditional Families”: Thematic Perceptions of Lesbian Parenting After 25 Years. *Frontiers in Psychology*. 10:2414. doi: 10.3389/fpsyg.2019.02414, who state, “There is now an extensive body of research on the psychological well-being of children and adolescents reared in sexual minority parent families. These children and adolescents have been found to fare as well as, or sometimes better than, those raised in mother–father parent families”.

¹³ See W. L. Sachs, 2009, *Homosexuality and the Crisis of Anglicanism* (Cambridge: Cambridge University Press) for a fuller historical account of this debate.

persons, nuclear disarmament, contraception, the equality of women, euthanasia, and so forth.

- 6.2 The Anglican Church of Australia, like many Church denominations around the world, is evaluating its doctrinal position on same-sex marriage. The fact that such evaluation is occurring speaks to the reality that the Church is able to perceive and discern through the Spirit “*the work of God in the world and ‘decide for God’ in response to such discernment*”.¹⁴ That is, the Church is doing what it has always done: being the people of God living out our faith in each historical moment and context, seeking to be faithful to our God, and to be ‘*response-able*’, able to respond using our God-given faculties of decision-making, rationality, argument, and reflection, under the guidance of Spirit.
- 6.3 The study of the history of Christian debate about moral issues shows that *the interpretation of Scripture* is always the primary locus for disagreement, and this is equally the case for same-sex marriage. It is also beyond dispute that *how* Scripture is interpreted is itself a primary issue of dispute, within¹⁵ and beyond Anglicanism. James K. A. Smith calls these “*Models of Interpretations of Interpretation*”.¹⁶
- 6.4 One of these models Smith identifies is an “*immediacy model*”, whereby it is claimed that God speaks directly to us through the supposed “*plain meaning*” or “*literal meaning*” of Scripture. And not only can God communicate with total clarity, we can, in this model, *apprehend* with total clarity. Thus the “*immediacy model*”, Smith says, “*is integrally connected to a belief in one true interpretation: an interpretation that is not an interpretation but a delivery of the truth from the hands of a veritable facteur de la vérité who in the end turns out to be God*”.¹⁷
- 6.5 The fallacy of the immediacy model, as Smith ably demonstrates, is obvious: “*Whenever someone promises to deliver ‘the Scriptures alone,’ he or she has always already delivered an interpretation that is carried out within an interpretive tradition*”.¹⁸ Moreover, he astutely observes: “*is it not simply begging the question to assert [in defence of immediacy] that the criterion for interpreting the Bible is the Bible itself?*”.¹⁹ One cannot escape the hermeneutical spiral without cutting off the epistemological branch upon which is sitting. Smith provides a thorough critique of the immediacy model: “*The quest for primal immediacy that animates many evangelical hermeneutical theories has been exposed by others as a search for a Holy Grail that cannot be found, that eludes its seekers and, in the end, that turns into little more than an epistemological wild-goose chase*”.
- 6.6 Why does this matter? Because it is important for the Appellate Tribunal to understand that the “*immediacy model*” of Scripture is used by virtually all opponents of same-sex marriage currently in the Anglican Church of Australia (and among Gafcon Anglicans internationally) and yet there has been insufficient scrutiny of its deep-seated (and in our submission insurmountable) philosophical problems. Nor has there been a clear enough articulation within the Anglican Church of Australia that the

¹⁴ L. T. Johnson, 2015 *The Revelatory Body: Theology as Inductive Art*, (Grand Rapids, MI: Eerdmans), 17.

¹⁵ R. A. Greer, 2006, *Anglican Approaches to Scripture: From the Reformation to the Present*. (New York: Crossroad).

¹⁶ J. K. A. Smith, 2000, *The Fall of Interpretation: Philosophical Foundations for a Creational Hermeneutic*. (Downers Grove: Intervarsity Press), 19. See also D. Kelsey, 1975, *The Use of Scripture in Recent Theology*. (Philadelphia: Westminster Press) and J. Goldingay, 1995, *Models for the Interpretation of Scripture*. (Grand Rapids: Eerdmans).

¹⁷ Smith, *ibid.* 56.

¹⁸ Smith, *ibid.* 53.

¹⁹ Smith, *ibid.* 56.

typical Gafcon Anglican approach to Scripture is, we submit, fundamentalist, out of accord with the overwhelming trajectory of historic Anglicanism's approach to Scripture,²⁰ intellectually brittle,²¹ and extremely peripheral in contemporary biblical studies internationally.

- 6.7 The immediacy model is evident in the chapters in the Doctrine Commission book opposing same-sex marriage,²² typified by Thompson's claim to be following "*a simple attentive reading of what is written in its immediate and biblical-theological context*",²³ leading to the assertion: "*If God has spoken and effectively communicated to us...*".²⁴ The immediacy is clear: there is no interpreter speaking, such as Thompson himself, nor even the author of the Scriptural text, but God directly. Again, the immediacy model is evident when Thompson pits the "*the words God has given us*" against interpretations, eliding the fact that it is not God's words but *Thompson's interpretation* (of Scriptural texts written in now dead languages, on non-extant manuscripts, thousands of years ago, in different cultures and times and places) vis-à-vis *others' interpretations*:

*"Are we willing to obey what is in fact written in the biblical text or do we think we know (or our culture knows) better? Will we take seriously the words God has given to us or will we seek a way to evade, manipulate, or explain away what is written? These are serious questions and they admit of no middle ground where we can pretend to accept mutually contradictory positions with the explanation they are merely 'interpretative differences'".*²⁵

- 6.8 It also matters for another vital reason, namely, as discussed below, we agree with opponents to same-sex marriage that the key Biblical texts on homosexual practice are at worst "*unconditionally negative*" as Loader puts it, or at best, not affirming.²⁶ Yet the immediacy model has no capacity to offer a critique of such in order to come to a different view, such as the argument we provide does. It is "*bound*" to the interpretations of its interpreters, who are then *a priori* forced to find a way to reconcile each and every text in a unified manner, because the possibility of multiple, disparate, disagreeing voices and perspectives in the Bible is ruled out, as we said *a priori* (for philosophical reasons, as Smith elucidates). As Barton observes: "*Somehow an attribution of authority to the Bible needs to leave open the way to recognizing that there are adiaphora in matters of religion. That there are essentials too need not be in doubt; but one cannot well live with a system in which everything is regarded as essential. That is a totalitarian delusion. It is the trap into which fundamentalism falls*".²⁷

- 6.9 Let us illustrate this with another text: "*Moses said, 'Thus says the Lord: About midnight I will go out through Egypt. Every firstborn in the land of Egypt shall die, from*

²⁰ See R. Greer, 2006, *Anglican Approaches to Scripture: From the Reformation to the Present* (New York: Crossroad); J. Barton, 2019, *A History of the Bible: The Story of the World's Most Influential Book* (London: Viking), especially chapter 16.

²¹ Smith, *ibid*.

²² See for example in EDC: M. Thompson, "*Attentively Reading Scripture*", K. M. Smith, "*Belonging to God in Relational Wholeness*", C. Smith, "*Family ties: Marriage, sex, and belonging in the New Testament*", M. Stead "*The Case against Same-sex Marriage*".

²³ Thompson, *ibid*, 78.

²⁴ Thompson, *ibid*, 84.

²⁵ Thompson, *ibid*, 80.

²⁶ W. Loader, 2010, *Sexuality in the New Testament: Understanding the Key Texts* (Louisville: Westminster John Knox).

²⁷ Barton, *ibid*, Conclusion.

the firstborn of Pharaoh who sits on his throne to the firstborn of the female slave who is behind the handmill, and all the firstborn of the livestock" (Exod 11:4-5). In the immediacy model, the interpreter is bound to a reading whereby God instigates infanticide; there is no possibility of an alternative interpretation, or of countering this view, such as critiquing it in light of Christ's teachings, or framing it as *"The author of Exodus believed that God had said..."* or so forth. For the immediacy model, the interpreter is not at liberty even to consider such arguments; rather, the interpreter has "to come to terms with" this divinely-sanctioned violence. In the immediacy model, divinely-sanctioned violence is non-negotiable (just as they would say, opposition to homosexual practice is non-negotiable).

- 6.10 Similarly, when the Church encounters issues on which the Scriptures offer contrary views, or supports views the Church sees as morally repugnant, or offers no critique of practices the Church abhors, the immediacy model again offers no alternative way to discern the will of God. As noted in 6.4 above, to resort to *"But the Bible interprets the Bible"* is to beg the question.
- 6.11 Let us now present an alternative model for reading Scripture, which is an amalgam of the models of Smith and Kelsey:²⁸ Interpretation is a Holy Spirit-guided, ecclesial practice that is intersubjective, shaped by *"the situation and traditionality of the interpreter"*²⁹ and *"held accountable to canonical Christian Holy Scripture's narrative of God relating to all that is not God to draw it to eschatological consummation"*.³⁰ The Church moreover makes *"imaginative construals of the kind of wholeness canonical Holy Scripture has"* because there are *"different ways of imaging the plot of the canon-unifying narrative"*³¹ and all such construals centre on God as Creator, incarnate in the person of Jesus, the Word of God.³²
- 6.12 As a consequence of this approach to Scripture, we would argue that *"Scripture shows us how the people of God come to make moral and theological judgments, rather than providing the substantive content of those judgments"*.³³ Hence to be faithful to Scripture does not mean we *exegete from Scripture and apply to lived human experience* a timeless moral-doctrinal precept, but rather that we make our case for a doctrinal position in dialogue with science, tradition, historical analysis, and lived human experience,³⁴ ensuring it is indeed *"held accountable to canonical Christian Holy Scripture's narrative of God relating to all that is not God to draw it to eschatological consummation"*. The theological rationale for this is located in the freedom and love of God, who as Creator has gifted us with dignity and freedom,

²⁸ D. Kelsey, 2009, *Eccentric Existence: A Theological Anthropology* (Louisville, KY: Westminster John Knox Press); Smith, *ibid*. We are also influenced by E. Schüssler Fiorenza, 2009, *Democratizing Biblical Studies: Toward an Emancipatory Educational Space* (Louisville, KY: Westminster John Knox) and L. T. Johnson, 2015, *The Revelatory Body: Theology as Inductive Art* (Grand Rapids, MI: Eerdmans).

²⁹ Smith, *ibid*, 151. By "traditionality" Smith means the *"plurality of traditions: a linguistic tradition, a sociocultural tradition, a geographic tradition, a religious tradition and so on"*. Smith writes, *"every interpretation...happens within an interpretive tradition, and within that interpretive tradition there is an accepted... normative...hermeneutic"*, 154.

³⁰ Kelsey, *ibid*, 458.

³¹ Kelsey, *ibid*, 461.

³² Kelsey, *ibid*, 469. The density of this paragraph arises from the challenge of condensing Kelsey's 1,000 page, two-volume work and its sophisticated hermeneutic to a single paragraph.

³³ Anstey, *Scripture and Moral Judgment*, 60. See also L. T. Johnson, 1996, *Scripture & Discernment: Decision Making in the Church* (Nashville: Abingdon Press).

³⁴ Johnson, *The Revelatory Body: "Scripture... points readers to the human body as the preeminent place of God's self-disclosure"*, 38.

through the Spirit. It also expects Scripture to contain diversity as seen in all areas of creation and sees diversity not as a threat to be eliminated but a gift to be embraced.

- 6.13 Contrary to the claims of the opponents of same-sex marriage in the ACA, Scripture is marked by diversity and differences of theological views from beginning to end:³⁵
- 6.13.1 In Scripture we are struck by this from the outset with two creation accounts, the first being Genesis 1:1–2:3 and the second Genesis 2:4–25. They differ in a great number of ways. The first occurs over seven days, the second has no timeframe. The first is set *‘everywhere’* and the second in a particular location in the Middle East. The first has man and woman made together on Day Six, the second has the man interacting with God first, and then the woman is made subsequently (and differently). The first ends with the focus on the Sabbath, the second on the man and woman *‘leaving and cleaving’*. The first has the pronouncement *‘it was good’* as a core theological assertion and the second early on states *‘it was not good for the man to be alone’*. Many scholars believe that the first is written by the so-called Priestly School and the second by the so-called Yahwist (who might be an individual, or a School). And so on.
- 6.13.2 The Deuteronomists’ theology (see Deut 28) is built around the notion of *‘if you obey God, God will bless you, if you don’t God will curse you’*. The Book of Job counters this theological approach by telling the story of Job who obeys God and yet is cursed. The story is not simply about Job; it is a critique of the Deuteronomistic theology.
- 6.13.3 Deuteronomy states: *‘I the Lord your God am a jealous God, punishing children for the iniquity of parents, to the third and fourth generation of those who reject me, but showing steadfast love to the thousandth generation of those who love me and keep my commandments’* (Deut 5:9–10), but Ezekiel explicitly argues against this: *‘The person who sins shall die. A child shall not suffer for the iniquity of a parent, nor a parent suffer for the iniquity of a child; the righteousness of the righteous shall be his own, and the wickedness of the wicked shall be his own’* (Ezek 18:20).
- 6.13.4 The Day of the Lord is presented as a day of warfare and bloodshed in many texts, and yet as a day of cosmic peace in others. This is starkly represented by two texts that are inverse to each other: Isa 2:4 *‘...they shall beat their swords into ploughshares, and their spears into pruning-hooks; nation shall not lift up sword against nation, neither shall they learn war any more’* versus Joel 3:10, *‘Beat your ploughshares into swords, and your pruning-hooks into spears’*.
- 6.14 These differences are not *“skin-deep”*, so attempts to harmonise them (as the immediacy model of interpretation is bound to do), not only do a disservice to the texts themselves but they miss the point entirely, namely, that the different theological traditions in the Old and New Testaments *are what characterise* the Scriptures; diversity is part and parcel of God’s gift to us.

³⁵ See also my chapters in EDC.

- 6.15 As we note above, we follow those scholars who argue that the Biblical texts (Genesis 19:1–11, Leviticus 18:22, 20:13; 1 Corinthians 6:9–10; 1 Timothy 1:10, Romans 1:26–27) on homosexual practice see it as morally wrong.
- 6.15.1 Via states: *“the biblical texts that deal specifically with homosexual practice condemn it unconditionally”*³⁶ then goes on to argue that *“homosexual practice among homosexually oriented couples should not be regarded as sin”*.³⁷
- 6.15.2 Du Toit concludes that the texts are all negative but concludes: *“Basically we should accept that, ... if a choice must be made between the biblical position on homosexuality and the love commandment – and such a choice is often inevitable – the latter must receive precedence”*.³⁸
- 6.15.3 Johnson is similarly forthright: *“I think it important to state clearly that we do [with regard to homosexuality], in fact, reject the straightforward commands of Scripture, and appeal instead to another authority when we declare that same-sex unions can be holy and good. And what exactly is that authority? We appeal explicitly to the weight of our own experience and the experience thousands of others have witnessed to, which tells us that to claim our own sexual orientation is in fact to accept the way in which God has created us. By so doing, we explicitly reject as well the premises of the scriptural statements condemning homosexuality—namely, that it is a vice freely chosen, a symptom of human corruption, and disobedience to God’s created order”*.³⁹
- 6.16 Opposing the view espoused in these seven texts, in light of larger, encompassing theological principles and moral judgements and Christian testimony, as proposed here, is a strategy of moral judgment that has been used throughout Church history.
- 6.16.1 We should note, however, that the majority of Christians who affirm same-sex marriage argue that these seven passages should be interpreted as *not* condemning same-sex relationships of the sort we are discussing in our current situation.⁴⁰
- 6.16.2 If the Church accepts this interpretation, the requirement to provide a coherent doctrinal moral argument still stands, and the criterion of being *“held accountable to canonical Christian Holy Scripture”* is met straightforwardly.
- 6.17 The analogy with debates about slavery and Christian racialism are such an instance and offer an instructive analogy for the Tribunal to consider, especially if the interpretation outlined in 6.15 is held.⁴¹ Consider for example some of the biblical

³⁶ Via, in D. O. Via and A. J. Gagnon, 2003, *Homosexuality and the Bible: Two Views* (Minneapolis: Fortress), 93.

³⁷ Via, *ibid*, 94.

³⁸ A. B. du Toit, 2003, *“Paul, Homosexuality and Christian Ethics”* in *Neotestamentica et Philonica: Studies in Honour of Peder Borgen* (ed. D. E. Aune; Leiden: Brill). See also Loader *ibid*.

³⁹ <https://www.commonwealmagazine.org/homosexuality-church-0>.

⁴⁰ Such as Brownson, Achtemeier, Song, and so forth.

⁴¹ As Lamond notes in his discussion of the place of analogical reasoning in legal argument, *“...analogies are useful heuristic devices for deepening and sharpening reflection on the merits. It is also the case that people are often more confident in their judgements about various concrete cases than they are about abstract theories that attempt to account for their judgements, and so regard this is a more profitable way to approach a question”*, G. Lamond, 2016, *“Precedent and*

arguments put forward in favour of slavery, not in terms of their details, but in how they admit no alternative view in their interpretation:

- 6.17.1 Hopkins, the Episcopalian Bishop of Vermont: *“The Bible’s defence of slavery is very plain. St. Paul was inspired and knew the will of the Lord Jesus Christ, and was only intent on obeying it. And who are we, that in our modern wisdom presume to set aside the Word of God ... and invent for ourselves a higher law than those holy Scriptures which given to us as ‘a light to our feet and a lamp to our paths’, in the darkness of a sinful and polluted world?”*⁴²
- 6.17.2 Fitzhugh: *“if white slavery be morally wrong, be a violation of natural rights, the Bible cannot be true”.*⁴³
- 6.17.3 Bledsoe: *“...the advocates of [abolitionism] are brought into direct collision with the Scriptures. This leads to one of the most dangerous evils connected with the whole system, viz., a disregard with [of?] the authority of the word of God”.*⁴⁴

- 6.18 Kidd explains how the relationship of Scripture to the question of race is much more than what individual texts might say:

*“...the connection between race and scripture goes much deeper than the words used to denote racial, linguistic and ethnic groups. The logical coherence of Christian theology depends upon a certain reading of the significance of race. Conversely, race has the potential to undermine some of the central doctrines of Christianity. Indeed, race ... started out as a theological problem in the early modern period. In particular, the unity of the human race was fundamental to Christian theology. If mankind did not spring from a single racial origin, then theologians were confronted with a scenario that undermined the very essence of the Christian story. The sacred drama of Fall and redemption rests upon assumptions of mankind’s common descent from Adam. Otherwise, the transmission of original sin from Adam would not have polluted the whole human race. In the second place, Christ’s atonement – however limited the scope for election – would not apply to the whole of mankind”.*⁴⁵

- 6.19 How then did the Church deal with moral issues like this, given that individual Scripture texts are never sufficient to form an argument by themselves? Swartley articulates the way the abolitionist argument was made: *“Abolitionist writers gave priority to theological principles and basic moral imperatives, which in turn put slavery under moral judgment. The point we should learn from this is that theological*

Analogy in Legal Reasoning, *The Stanford Encyclopedia of Philosophy* (ed. E. N. Zalta)
<https://plato.stanford.edu/archives/spr2016/entries/legal-reas-prec/>.

⁴² J. H. Hopkins, 1864, *A Scriptural, Ecclesiastical and Historical View of Slavery, from the Days of the Patriarch Abraham to the Nineteenth Century: Addressed to The Rt. Rev. Alonzo Potter, D.D., Bishop of the Protestant Episcopal Church, in the Diocese of Pennsylvania* (New York: W. I. Polley & Co.), 16–17.

⁴³ G. Fitzhugh, 1960 reprint, *Cannibals all! Or Slaves without Masters* (ed. C. V. Woodward; Cambridge, MA), 199–200.

⁴⁴ Bledsoe, 1860, “Liberty and Slavery: or, Slavery in the Light of Moral and Political Philosophy” in *Cotton is King, and Pro-Slavery Arguments Comprising the Writings of Hammond, Harper, Cristy, Stringfellow, Hodge, Bledsoe, and Cartwright on This Important Subject* (New York: Negro Universities Press 1969 reprint), 379.

⁴⁵ C. Kidd, 2006, *The Forging of Races: Race and Scripture in the Protestant Atlantic World 1600–2000* (Cambridge: Cambridge University Press), 24–25, emphasis original.

principles and basic moral imperatives should be primary biblical resources for addressing social issues today. These should carry greater weight than a specific statement on a given topic even though the statements speak expressly to the topic under discussion".⁴⁶ Or, to use the language of Kelsey above, the Church seeks to formulate an argument that is in accord with "the canonical Christian Holy Scripture's narrative of God relating to all that is not God to draw it to eschatological consummation" as a whole.

- 6.20 In other words, the doctrinal moral argument, which Via, du Toit, Johnson, Loader, and other Christians propose with respect to same-sex marriage, is analogous to how abolitionists approached slavery, especially with respect to how the Scriptures in the case of slavery *prima facie* offer more support to the proslavery position than the antislavery one. It is the approach indeed that the Church has always taken with moral issues, namely, reasoning out a morally defensible position in light of the whole revelation of God, in accord with Scripture taken as a whole, informed by the contemporary scientific knowledge we have about human sexuality, debated and refined in respectful conversation within the Church of God, and shaped by the testimony of those on the "inside" of the question under discussion.⁴⁷ It is to this critical issue of testimony that we now turn.

7. Lived Experience and Same-sex Marriage

- 7.1 Scripture testifies without hesitation that God is alive and present and engaged with God's world in the midst of our lives through the Spirit. The word of God is spoken not only through Scripture but in and through human experience. As Johnson puts it: *'The world of Scripture is one that is answerable to God at every moment; it is a world in which God acts intimately and graciously within creation, above all within the freedom of those created according to the image of God.'*⁴⁸ The early Church's struggle with Gentile inclusion (Acts 10–15) was guided in the end by the undeniable reality of God's Spirit at work in the lives of the Gentiles.
- 7.2 Such recognition of God through the Spirit in our lived experience has throughout history always been the impetus for the re-evaluation of our doctrine. It was the stories coming out of Nazi Germany that prompted a radical rethink of Christian attitudes to Judaism; it was the stories of the oppression of slaves, of women, of

⁴⁶ W. Swartley, 1983, *Slavery, Sabbath, War, and Women: Case Issues in Biblical Interpretation* (Scottsdale, Pennsylvania: Herald Press), 61, emphasis added. Barton, *ibid*, observes that this idea of "criticising Scripture" is not a modern one: *"Despite all the continuities between the Reformers and their medieval heritage, they introduced a new idea into the interpretation of the Bible: the possibility of criticizing the Church's teaching in the light of what the Bible appeared to be saying – and, in Luther's case, even of criticizing parts of the Bible itself in the light of what he took to be its overall drift. This was a revolutionary idea, which would feed into the premium on independent thought that would come to characterize the European Enlightenment. For the first time it opened up a gap between the Bible and the faith which hermeneutical ingenuity could not bridge"* (emphasis added).

⁴⁷ For further examples of arguments in favour of same-sex marriage, see M. Achtemeier, 2014, *The Bible's Yes to Same-Sex Marriage: An Evangelical's Change of Heart* (Louisville, KY: Westminster John Knox); B. J. Broonen, 1996, *Love Between Women: Early Christian Responses to Homoeroticism* (Chicago: Chicago University Press); W. Brownson, 2013, *Bible, Gender, Sexuality: Reframing the Church's Debate on Same-Sex Relationships* (Grand Rapids, MI.: Eerdmans); A. H. Cadwallader (ed.), 2016, *Kaleidoscope of Pieces: Anglican Studies on Sexuality* (Adelaide: ATF Press); S. Cornwall, 2017, *Un/familiar Theology: Reconceiving Sex, Reproduction and Generativity* (London: Bloomsbury, T&T Clark); J. Bradbury & S. Cornwall (eds.), 2016, *Thinking Again About Marriage: Key Theological Questions* (London: SCM Press); T. S. Haller, 2009, *Reasonable and Holy: Engaging Same-Sexuality* (New York: Seabury); Song, *ibid*; M. Vines, 2014, *God and the Gay Christian: The Biblical Case in Support of Same-Sex Relationships* (New York: Convergent Books); B. Walsh, 2018, "Sex, Scripture and Improvisation", In *One God, One People, One Future: Essays in Honour of N. T. Wright*, Edited by John Anthony Dunne & Eric Lewellen (London: SPCK), 287–315.

⁴⁸ Johnson, *ibid*, 46.

indigenous people, and so forth, that has led to change in our doctrinal views on these matters. Or in recent years, the contribution to theology by people living with disabilities has led to very significant changes in our theology of disability.⁴⁹ And very recently, it is the stories of children suffering childhood sexual abuse that in part led to changes in the doctrine of confession in the Anglican Church of Australia in 2017.

- 7.3 In each of these cases, it was not simply the interpretation of a particular text or texts of Scripture that led to the changes; rather, it was the testimony of those on the inside, those affected by the issues, be they faithful members of the Church or not. In the debate on slavery, ultimately there was *“the recognition that no matter what Scripture says, owning persons cannot be compatible with the mind of Christ”*.⁵⁰ Johnson goes on to counter those who might understand this as a rejection of Scripture:

“Rereading and reinterpreting Scripture in the light of human experience that at first appears to be dissonant with Scripture—finding texts that formerly were not seen, discovering new dimensions of commonly read passages, relativising those texts that do not accord with God’s new work—is not a form of disloyalty to Scripture. To the contrary, it is loyalty of the highest sort, for it is driven by the conviction that Scripture truly is God-inspired, truly does speak God’s word to humans, when it is passionately and patiently engaged by those listening for God’s word as well in human experience”.⁵¹

- 7.4 It is the case that the majority of Christians who have moved from opposing to affirming same-sex marriage have been significantly influenced by the testimony of gay Christians. For example, Brownson, an evangelical professor of New Testament, observes: *“But then something happened that altered my life in major ways: my eighteen-year-son told my wife and me that he believed he was gay”*.⁵² Another evangelical NT professor, Mark Achtemeier tells the story of a young, celibate lesbian at theological college whose testimony troubled him deeply: *“The result of her many years of faithful, costly obedience was not life and flourishing, but brokenness and spiritual exhaustion, alienation from God and a weariness that was leading her to give up on the faith altogether”*.⁵³ Yet another evangelical scholar, David Gushee, wrote: *“My mind has changed – especially due to the transformative encounters I have been blessed to have with gay, lesbian, bisexual and transgender Christians”*.⁵⁴

8. A Theological Defense of Same-sex Marriage⁵⁵

- 8.1 It is important to acknowledge there is no substantive moral objection to same-sex marriage. That is, there is no rational account of which particular sin is being committed in a same-sex marriage *qua* same-sex marriage.

⁴⁹ See S. Clifton, 2018, *Crippled Grace: Disability, Virtue Ethics, and the Good Life* (Waco, Texas: Baylor University Press) and A. Yong, 2007, *Theology and Down Syndrome: Reimagining Disability in Late Modernity* (Waco: Baylor University Press).

⁵⁰ Johnson, *ibid*, 50.

⁵¹ Johnson, *ibid*, 50.

⁵² Brownson, *ibid*, 11.

⁵³ Achtemeier, *ibid*, 3-4.

⁵⁴ D. Gushee, 2015 (2d ed), *Changing our Mind: A Call from America’s Leading Evangelical Ethics Scholar for Full Acceptance of LGBT Christians in the Church* (Canton, MI: Read The Spirit Books), 5. See my story in this regard in Anstey, *The Case for Same-sex Marriage*, 270-271.

⁵⁵ See Anstey, *The Case for Same-sex Marriage*, for a fuller account.

- 8.2 This is evidenced by the fact that, to our knowledge, in the literature opposing same-sex marriage, no account is offered as to what is specifically wrong about same-sex marriage. What sin for instance is committed arising from their *sexual union* as gay people? When two people of the same gender give their lives to one another in life-long, covenantal fidelity and love, what specific sin is enacted? What harm is being done? What evil is being propagated? The answer is that there is none. To the contrary, the loving, fruitful, positive same-sex marriages of countless people is a compelling witness to its goodness and generativity.
- 8.3 If we take other types of sexual practice, such as adultery, incest, paedophilia, bestiality, sexual abuse, and so forth, the intrinsic wrongness and the harmful effects of each of these specific sexual activities is straightforward to articulate both within the Church and secular society, and such moral judgments find ready support from the natural sciences.
- 8.4 But for same-sex marriage, if it is indeed sinful, there needs to be a compelling, coherent theological account for what constitutes its sinfulness. Christian ethical judgments cannot be determined simply by *divine fiat*, so the “*argument*” – we use the term reservedly – that same-sex marriage is wrong simply because God says it is wrong, is unchristian, unbiblical, arbitrary, and fails to meet any “*standards of excellence*”⁵⁶ in its theological formulation. Such a rationale is not *fides quaerens intellectum* “*faith seeking understanding*”; rather, it is fideistic, an instance of *credo quia absurdum*, “*I believe because it is absurd*”.
- 8.5 Having noted the failure of being able to find a sin being committed in same-sex marriage, we now consider the good desires and intentions and forms of love that are at the heart of same-sex marriage.
- 8.6 Jesus, and subsequently the Church, has taught that if one has lustful desires, one has committed the sin of lust, even when it is not enacted (Mat 5:28). What determines the sinfulness is the desire. One could not commit an act of lust without the lustful desire, because what makes the act lustful is the lustful intentionality contained within the lustful desire. On both sides of the debate about same-sex marriage, there is agreement that same-sex attraction desires are not sinful. Given that such desires pertain to the wellbeing and flourishing of another person, they therefore must be good desires.
- 8.7 Or, to put it positively, same-sex love is like all other good love (when it is good and not something distorted): it selflessly seeks the well-being of (*agape*) and union with (*eros*) the other, as Aquinas so argued.⁵⁷ It is directed toward the other and yearns for that which is good and true and beautiful for them, and given its reciprocity, it yearns to be loved in equal measure, freely and completely, and to be united bodily with the other. Such love is Christ-like and Christ’s love for us is in fact the measure and standard of all love.
- 8.8 Therefore, given the bond between good desire, good intention, and good action, the expression of this love must be good, Christ-like, godly. And thus there is no rationale for saying that the expression of such love sexually is wrong, but that any non-sexual expression is fine. This is because sexual attraction and expression of love is part and

⁵⁶ Kelsey, *ibid*, 23.

⁵⁷ Aquinas, *Summa Theologiae*, I-II. Q28.

parcel of what constitutes reciprocal, exclusive love (i.e., marital-type love) between couples.⁵⁸

- 8.9 Thus, when one ponders seriously and deeply the nature of the love same-sex couples have for one another, and when one sets aside all those counter arguments which appeal to fallen human nature (given that such counter arguments count equally against heterosexual marriage), the faithful enactment of such same-sex love must necessarily be deemed to be good, wholesome, and, indeed, Christ-like.
- 8.10 In sum, God revealed in Christ through the Spirit affirms same-sex marriage. As the Church in Wales Doctrine Commission report stated (in the section supporting same-sex marriage):

*“A Christian understanding of marriage is not threatened by the inclusion of homosexuality; it is enriched by it. Blessing a marriage between a same-sex couple would not be a redefinition but a deepening of the Christian understanding of marriage, consistent with the path of its development through scripture and tradition. If marriage is a common good, then a denial of the possibility of marriage for same-sex couples disregards the legitimacy of their identity and experience, rendering their love, desire and experience voiceless, rejecting the original goodness of each person as they are: whole, and worthy of love. This failure of love is a bar to the flourishing of all members of society, a challenge to the notion of marriage as a common good, a hindrance to each person’s encounter with the gracious favour of God”.*⁵⁹

⁵⁸ The fact that some couples for various reasons do not engage in such sexual activity does not negate the argument.

⁵⁹ A Report by the Standing Doctrinal Commission of The Church In Wales, 2014, *The Church in Wales and Same-sex Partnerships*.