



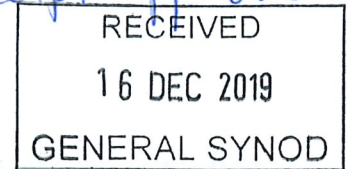
Anglican Church Diocese of Sydney

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15 December 2019

Ms Anne Hywood
Registrar, Appellate Tribunal
General Synod Office
Anglican Church of Australia
Suite 4, Level 5
189 Kent St,
Sydney NSW 2000

By Email: appellatetribunal@anglican.org.au

Dear Anne,

References to the Appellate Tribunal with respect to the Blessing of Persons Married According to the Marriage Act 1961 Regulations of the Synod of Wangaratta – Primary Submissions of the Synod of the Diocese of Sydney

I am pleased to enclose the primary submissions of the Synod of the Diocese of Sydney with respect to the references concerning the 'Blessing of Persons Married According to the Marriage Act 1961 Regulations of the Synod of Wangaratta' dated 5 September and 21 October 2019.

Thank you for making contact with the President of the Tribunal at our request and communicating his decision to grant us an extension until 9am on Monday, 16 December 2019 to file these submissions.

I understand that notwithstanding Rule 9(6) of the *Appellate Tribunal Rules 1988* which requires that "Ten copies of the submission and accompanying documents (including witness statements) shall be filed", that these are not required by the Tribunal when submissions are filed electronically. If this is not the case, please let me know, and I will deliver ten printed copies of the submissions to the General Synod Office.

If you have an enquiries concerning these submissions, please feel free to contact me on 9265 1647.

Yours sincerely

Steve Lucas
Senior Legal Counsel
Sydney Diocesan Services

In the Appellate Tribunal of the Anglican Church of Australia

References with respect to the *Blessing of Persons Married According to the Marriage Act 1961 Regulations of the Synod of Wangaratta*

Primary Submissions of the Synod of the Diocese of Sydney

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Introduction

1. These primary submissions set out the position of the Synod of the Diocese of Sydney (**Sydney**) with respect to:
 - (a) the questions posed by the Primate regarding the Blessing of Persons Married According to the Marriage Act 1961 Regulations of the Synod of Wangaratta

(**Regulations**) in the reference dated 5 September 2019 (**Primate's Reference**),

and

(b) the questions posed by 41 members of the General Synod regarding the Regulations in the reference dated 21 October 2019 (**GS Member Reference**).

2. Collectively, these will be referred to as "**the References**" in this submission.
3. Sydney reserves the right to make further submissions in respect to the References in accordance with the timetable set by the Appellate Tribunal and the *Appellate Tribunal Rules 1988*.
4. Sydney has had the opportunity to review the draft submissions of the Synod of the Diocese of Tasmania. Sydney notes in particular Tasmania's submissions with respect to the limitations on the legislative power of the Diocese of Wangaratta under the *Church of England Act 1854 (Vic)*, and supports those submissions.

The Questions

Primate's Reference

5. Sydney submits that the Appellate Tribunal should answer the Primate's Reference as follows:

Question 1: The Regulations are inconsistent with the Fundamental Declarations and Ruling Principles.

Question 2: The Regulations are not validly made.

GS Member Reference

6. Sydney submits that the Appellate Tribunal should answer the GS Member Reference as follows:

Question 1: The Form of Service in Appendix A to the Regulations is not consistent with the doctrine of this Church, the Fundamental Declarations or the Ruling Principles.

Question 2: The use of any other form of service to bless a civil marriage which involves a union other than between one man and one woman would not be consistent with the doctrine of this Church, the Fundamental Declarations or the Ruling Principles.

Question 3: The Regulations are not validly made.

Summary of Submissions

7. The doctrine of marriage of the Anglican Church of Australia is that marriage is the voluntary union of one man and one woman arising from mutual promises of lifelong faithfulness. This doctrine is not limited to “Christian marriages” (to use the term used by Wangaratta). Marriage is ‘God’s ordinance’ for all humanity, as the pattern of relationship established by God from the beginning, and normative for all human ‘coupling’ relationships that are valid in his sight.
8. The Form of Service prescribed by the Regulations involves blessing the coupling of the persons who have been married under the *Marriage Act 1961 (Cth)*. By the generality of its wording it would permit the blessing of couplings that arise from civil marriages that are contrary to the doctrine of the Church (in particular civil marriages involving two persons of the same sex).
9. Constitutionally-speaking, the doctrine of the Church is contained in both the Fundamental Declarations and the Rulings Principles in sections 1 to 4 of the Constitution. It has 4 sources:
 - (a) The “Christian Faith as professed by the Church of Christ from primitive times” (s.1).
 - (b) The “commands of Christ,... His doctrine, [or] His discipline” (s.3), or otherwise arising from the “rule and standard of faith” from “the canonical scriptures of the Old and New Testaments” (s.2).
 - (c) The “principle[s] of doctrine or worship” in the Book of Common Prayer (**BCP**), the Ordinal and the Thirty Nine Articles (**39 Articles**) (s.4).

(d) Principles, which in 1962 were principles of the Church of England embodied in the BCP, the Ordinal or the 39 Articles and which have therefore been retained by this church (s.4) and not been altered by any exercise by the General Synod of its plenary authority as described in section 4 of the Constitution.

10. The doctrine of marriage of the Anglican Church of Australia arises from all 4 sources.
11. The Form of Service in the Regulations involves invoking God's approval and favour upon the coupling. This is contrary to the doctrine of marriage.
12. The Regulations are therefore invalid as they are inconsistent with the Fundamental Declarations and Ruling Principles and repugnant to the Constitution.
13. Furthermore, even if, as Wangaratta contend, the Regulations concern matters of ritual and ceremonial, and not faith (and doctrine), they constitute an unauthorised alteration to the ritual and ceremonial of this Church that is not in conformity with an alteration made by the General Synod (section 71). An alteration which deals with or concerns the ritual, ceremonial or discipline of the church also requires a special bill process to be followed (section 28).

The Regulations, Form of Service and its effect

14. The description of the Form of Service in the Wangaratta submissions (WS10) does not adequately describe its force and effect.
15. The question of whether the Regulations are inconsistent with or repugnant to the Constitution, and in particular the Fundamental Declarations and Ruling Principles, is addressed as a matter of substance by reference to the true scope and purpose of the Regulations and their nature and character: *Stevens v. Perrett* (1935) 53 CLR 449 at 462.

16. It is not the case that the Form of Service is a service for merely blessing the persons in the civil marriage (cf 10.4). It is clear from the wording that the service is a blessing of the coupling of the persons who have been married.
17. This appears from the content of the service including the fact that:
 - (a) in the introduction the priest addresses the "couple";
 - (b) the priest states the purpose of the service as coming "together to ask God's blessing on N and N as they continue their married life together";
 - (c) the priest asks the congregation to thank God "for the physical and emotional expression of that love; and for the blessings of companionship and friendship";
 - (d) the priest then prays asking God "through the power of the Holy Spirit may N and N become living signs of God's love and may we uphold them in the promises that each affirms this day";
 - (e) under the heading "The promises" the priest refers to the fact that the couple have entered into a civil marriage and "now seek God's blessing on your ongoing life together" and then asks the couple "Will you be to each other a companion in joy and a comfort in times of trouble, and will you provide for each other the opportunity for love to deepen?";
 - (f) the couple are asked to jointly respond "We will, with God's help";
 - (g) the couple are then invited to express not their individuality but their joinder by the question "Will you, N continue to give yourself to N, sharing your love and your life, your wholeness and your brokenness, your failure and your success?";

- (h) under the prayers the prayers include terminology demonstrating that the coupling is the purpose of the service and blessing by words which emphasise the coupling including:

“Jesus, our brother, inspire N and N in their lives together, that they may come to live for one another and serve each other in true humility and kindness. Through their lives may they welcome each other in times of need and in their hearts may they celebrate together in their times of joy, for your namesake, Amen.”

And:

“Holy Spirit of God, guard and defend N and N in their life together...”

18. That the Form of Service does not specify the sex of the persons who have been married (WS10.5) is the very point that raises the Constitutional matter.
19. That is because the Regulations and the attached Form of Service are directed at blessing the coupling of persons married according to the *Marriage Act 1961 (Cth)* which can, as a result of amendments made by the *Marriage Amendment (Definition and Religious Freedoms) Act 2017 (Cth)*, include two persons of the same sex.
20. That the Regulations contain clauses for conscientious objection (see clauses 5 and 6) reinforces the purpose of the Regulations as providing a Form of Service which includes the blessing of the coupling of same-sex married persons. There would be no need for any conscientious objection, if the Form of Service was limited to the marriage of a man and woman.
21. These submissions, and the questions posed in the References, focus on the potential use of the Form of Service for the blessing of civil marriages involving a same-sex couple.

This is in large part because that is the primary intended use of the Form of Service. This much is clear from the circumstances, including Bishop John Parkes' 2019 presidential address to the Synod of Wangaratta¹ and the scheduled blessing of the civil marriage of John Davis and Robert Whalley, which was delayed by Bishop Parkes as a result of the Primate's reference to the Tribunal.² However there are other ways in which the Form of Service could be used contrary to the doctrine of this Church and inconsistently with the Fundamental Declarations and Ruling Principles. For example, the Regulations would permit the blessing of a civil marriage of a couple who are in a prohibited relationship listed in the *Matrimony (Prohibited Relationships) Canon 1981* (or the Table of Kindred and Affinity in the case of a diocese that has not adopted that Canon). They also raise issues in relation to the remarriage of divorced persons, as it would permit the blessing of a civil marriage that was impermissible under the *Marriage of Divorced Persons Canon 1981*. Sydney reserves the right to make further submissions on these matters should the need arise.

Jurisdiction

Section 63(1)

22. The Appellate Tribunal has jurisdiction to hear the references under section 63(1) on the basis that "...a question arises under this Constitution...".

The resolution of genuine constitutional issues in respect to changes that are in prospect

23. The Diocese of Wangaratta (**Wangaratta**) refer to the *Report of the Appellate Tribunal concerning certain matters to do with the conduct of church services* (7 May 1996) to argue that the References do not involve a question arising under the Constitution (WS15). The 1996 reference concerned a series of questions about various practices

¹ <https://www.wangaratta-anglican.org.au/presidential-address-synod-2019/>

² <https://www.bordermail.com.au/story/6377928/same-sex-blessing-delayed-by-challenge-but-bishop-stands-firm/?cs=9681>

which the Tribunal noted as having “no context or frame of reference”, which rendered them “vague and imprecise” and “prevented the Tribunal from giving a useful answer”.³

24. The Tribunal went on to note:

There is accordingly much to be said for regarding the jurisdiction with circumspection when questions are asked for opinions about established procedures or usages within the Church **changes to which are not evidently in prospect**. Several of the questions covered by the present Reference are in this category. The Tribunal thinks it necessary to distinguish carefully between its being used, on the one hand, **in aid of the resolution of genuine constitutional issues** and, on the other, as a sounding board for matters of theological contention between different traditions and emphases with the Anglican Church of Australia.⁴ (emphasis added)

25. Furthermore, Justice Cox has stated that: “The phrase ‘under the Constitution’ is not to be interpreted pedantically or narrowly”.⁵

26. The Form of Service prescribed by the Regulations is of itself neutral as to those civil marriages that may be blessed. However, the changed legal definition of marriage in Australia has now opened the possibility of the service being used to bless civil marriages other than between a man and woman. The References therefore concern changes with respect to services for the blessing of civil marriage that are “evidently in prospect” within the Diocese of Wangaratta. Other dioceses (for example, Newcastle) have proposed similar legislation and are awaiting the outcome of this reference to determine their next steps.

³ Report of the Appellate Tribunal concerning certain matters to do with the conduct of church services 7 May 1996, at page 6.

⁴ Page 7.

⁵ Report and Opinion of the Tribunal on the “Ordination of Women to the Office of Priest Act 1988” of the Synod of the Diocese of Melbourne, 2 November 1989. (“1989 Opinion”). Page 11.

27. The Regulations themselves give rise to a question under the Constitution because the Regulations:

- (a) purport to provide for a form of blessing of persons married according to the *Marriage Act 1961* (which as a result of amendments made by the *Marriage Amendment (Definition and Religious Freedoms) Act 2017* now includes same sex couples), and
- (b) prescribe and annex a form of service which form of service by the generality of its wording does not exclude civil marriages involving persons of the same sex (or other couplings that are inconsistent with the doctrine of this Church).

28. The outcome of the References will be relevant to determining whether the blessing of a civil marriage other than between a man and a woman is constitutionally permissible within the Anglican Church of Australia and, if it is, the means by which it can be permitted. These are significant constitutional issues that have seriously impaired and divided the Anglican Church in other parts of the world. They are not merely matters of theological contention for which the Tribunal is acting as a sounding board.

The constitutional requirement that diocesan legislation be consistent with the Fundamental Declarations and Ruling Principles

29. Wangaratta also submit that question 1 of the Primate's Reference:

- (a) concerns an exercise of legislative power by Wangaratta under the Canon,
- (b) does not call for the interpretation of any provision of the Constitution, and
- (c) involves an impermissible examination of whether an ordinance is conducive to the order and good government of a diocese.⁶

30. Similar arguments were advanced in relation to the 1989 reference to the Appellate Tribunal concerning the validity of the Ordination of Women to the Office of Priest Act

⁶ Paragraph 23.

1988 of the Synod of the Diocese of Melbourne. The Tribunal rejected those arguments and determined that it had jurisdiction to deal with the Reference under section 63(1).

31. The (Diocese of) Wangaratta is partly in the territory of New South Wales and partly within the territory of Victoria. Its constitution is set out in legislation passed by both states.⁷
32. To the extent that the Regulations have force and effect in Victoria, Wangaratta are relying on the *Church of England Act 1854 (Vic)* (the **1854 Act**). To the extent that the Regulations have force and effect in New South Wales, Wangaratta are relying on section 2(1) of the constitution set out in the schedule to the *Anglican Church of Australia Constitutions Act 1902 (NSW)*.
33. Both Acts restrict the operation of the respective state constitutions to the extent of inconsistency with the (1961) Constitution.⁸
34. Furthermore, section 51 of the (1961) Constitution operates as a limitation on the legislative power of a diocesan synod, specifying that the power of a diocesan synod to make ordinances is "subject to this Constitution".⁹
35. The Tribunal stated in its determination on the 1989 reference that:

Where an alleged source of right to support an ordinance **or the source of a defence to invalidate an ordinance** is a section of the Constitution it is clear

⁷ Churches Constitution Act 1854 (Vic) and the Anglican Church of Australia Constitution Act 1902 (NSW). The *Churches Constitution Act 1854 (Vic)* gives a limited legislative power to the Synods of dioceses within Victoria, and is not a source of plenary power. The *Anglican Church of Australia Constitution Act 1902 (NSW)* does give plenary power for diocesan Synods to make ordinances for the order and good government of the Church within the territory of New South Wales (subject to the Anglican Church of Australia Constitution Act 1961).⁷ The Constitution of the Anglican Church of Australia was enacted within Victoria pursuant to the *Anglican Church of Australia Constitution Act 1960 (Vic)* and within New South Wales pursuant to the *Anglican Church of Australia Constitution Act 1961 (NSW)*.

⁸ Section 2 of the *Anglican Church of Australia Constitution Act 1960 (Vic)* and section 4 of the *Anglican Church of Australia Constitutions Act 1962 (NSW)*.

⁹ The 1989 Opinion. See particularly page 30 where the Tribunal stated that section 51 "also makes it plain that diocesan legislation must conform with such overriding constraints as the Fundamental Declarations".

that a matter arises under the Constitution, see e.g., *Felton v Mulligan* (1971) 124 CLR 367, 408.¹⁰ (emphasis added)

36. The argument in the present matter is that the Regulations are invalid on the grounds that they do not conform to the Fundamental Declarations and Ruling Principles because they purport to authorise the use of a Form of Service that is contrary to the doctrine of this Church.

Conclusion regarding jurisdiction under section 63(1)

37. We submit that the References seek to resolve genuine constitutional issues in relation to changes that are evidently in prospect and that a question arises as to whether the Regulations are invalid on the basis that they do not conform to the requirements in the Constitution. The References should be dealt with by the Tribunal exercising its jurisdiction under section 63(1).

The matters before the Tribunal

38. Wangaratta argue that the Regulations are a valid exercise of legislative power made pursuant to section 5 of the *Canon Concerning Services 1992*. Section 5, inter alia, allows a minister to use forms of service considered suitable by the minister for an occasion for which no provision has been made, subject to:

- (a) any regulation made from time to time by the Synod of the minister's diocese,
- (b) the form of service being reverent and edifying, and
- (c) the form of service 'not being contrary to or a departure from the doctrine of this Church'.

39. The question before the Tribunal is not primarily whether the Regulations meet the requirements of the Canon. Delegated legislation is invalid if it is repugnant to the

¹⁰ The 1989 Opinion, Page 7.

general law, including some other statute, in this case the Constitution.¹¹ The Canon would be invalid if it permitted a form of service that 'contravenes [a] principle of doctrine' (section 4).

40. Contrary to the submissions made by Wangaratta, the *Interpretation Canon 1995* does not apply to the *Canon Concerning Services 1992* since it is a canon made after 1 January 1996.¹² However regardless of whether the 'doctrine' in the *Canon Concerning Services 1992* has the same or a different meaning to 'doctrine' in the Constitution, the Regulations are invalid on the basis that they 'contravene [a] principle of doctrine'.
41. The task before the Tribunal involves identifying the doctrine of this Church with respect to marriage and determining if the Regulations (and the Form of Service therein) are contrary to this doctrine.

The arguments

42. The arguments set out in the Wangaratta submissions on the meaning of 'doctrine' as it relates to the blessing of a civil marriage can be summarised as follows:
- (a) only teachings on questions of faith are doctrines for the purposes of the *Canon Concerning Services 1992*,
 - (b) the Church's teaching on marriage is a matter of ritual, ceremonial or discipline and not a question of faith,
 - (c) the Church's teaching on marriage is therefore is not a 'doctrine of this Church',
 - (d) a service for the blessing of a civil marriage used pursuant to the *Canon Concerning Services 1992* is valid notwithstanding that it is or could be contrary to the Church's teaching on marriage, and

¹¹ Halsbury's Laws of Australia at [385-830], [385-850].

¹² Clause 3 of the *Interpretation Canon 1995* provides, inter alia, that it applies to canons made by the General Synod on or after 1 January 1996.

- (e) in any event – if the Church’s teaching on marriage is a ‘doctrine of this Church’ - it is a position that is confined to Anglicans, “is not a universal statement about the morality of other kinds of relationships” and the marriage service in BCP is not “a binding statement of whether persons in other kinds of relationship can be blessed or otherwise regarded as worthy of God’s favour”.

43. To the contrary, Sydney submits that:

- (a) the proper construction of the Constitution is that ‘faith’ for the purposes of the definition of ‘doctrine’ is established by both the Fundamental Declarations and Ruling Principles,
- (b) the question of blessing the coupling of “who” are married is essentially a question of what is believed as the doctrine of the church rather than a question of how a ceremony of blessing is performed or carried out and by whom and therefore not matters of ritual, ceremonial and discipline,
- (c) even if it were a matter of ritual or ceremonial, as Wangaratta contend, it would involve an alteration in the ritual and ceremonial of this Church which is only possible if it is in conformity with an alteration made by the General Synod (section 71),
- (d) the Church’s doctrine is that marriage is the voluntary union of one man and one woman arising from mutual promises of lifelong faithfulness,
- (e) this is a teaching on a question of faith and ‘a doctrine of this Church’ for the purposes of section 4 of the Constitution,
- (f) the Church’s doctrine of marriage (outlined in paragraph (c)) has universal application and it is incorrect to conclude that it is limited to

Anglicans (see the material under the heading 'The Doctrine of Marriage of the Anglican Church of Australia'),

- (g) a form of service for the blessing of a civil marriage involving a union other than between a one man and a one woman is contrary to the doctrine of marriage,
- (h) the Form of Service authorised by the Regulations is contrary to the 'doctrine of this Church' because it involves declaring God's approval upon a coupling that is contrary to the doctrine of marriage, and
- (i) the Regulations are therefore invalid as they are repugnant to the Constitution.

44. The remainder of this submission further articulates and justifies this position.

The meaning of 'doctrine' in the Constitution

45. The Constitution is divided into two parts and various chapters within those parts.

46. Part I broadly speaking addresses the doctrines and beliefs of the Church and Part II addresses the government of the Church.

47. Part I contains two chapters being:

- (a) Chapter I – Fundamental Declarations (sections 1-3); and
- (b) Chapter II – Ruling Principles (sections 4-6).

48. The Fundamental Declarations identify as Christian the nature of the faith held by the Church as Christian and the three sources by which such faith is received, professed and obeyed, namely:

- (a) The Christian Faith as professed by the Church of Christ from primitive times, and in particular as set forth in the Creeds - section 1;

- (b) The Bible (canonical scriptures of the Old and New Testaments) – section 2;
and
 - (c) The commands, doctrine, sacraments and discipline of Christ – section 3.
49. Section 4 of the Ruling Principles identify approved doctrine and principles from further sources being the BCP, the Ordinal and the 39 Articles.

The Ruling Principles

50. Section 4 provides that the Church has plenary authority to make statements as to the faith ritual, ceremonial or discipline of the Church and to order its forms of worship and rules of discipline and to alter or revise such statements, forms and rules provided that such statements, forms, rules or alteration or revision are consistent with the Fundamental Declarations and are made as prescribed by the Constitution. Further, the BCP (including the Ordinal) together with the 39 Articles are regarded as the authorised standard of worship and doctrine of the Church.
51. There is a limitation on alteration in that no alteration or permitted variation from the services or articles in BCP or the 39 Articles shall contravene any principle of doctrine or worship laid down in such standard. There is a further limitation in that whilst a bishop of a diocese may at his discretion permit such deviations from an existing order of service, that deviation may not contravene any principle of doctrine or worship within BCP or the 39 Articles.
52. The effect of section 4 is to adopt all of the doctrines and principles of the Church of England as at 1 January 1962 as the doctrines and principles of “this Church”.
53. Pursuant to section 5 of the Constitution whilst the Church has plenary authority and power to make canons, ordinances and rules for the order and good government of the Church, that is subject to the Fundamental Declarations and the provisions of Chapter II of the Constitution.

Doctrine

54. The Constitution is structured such that the government of the Church and what the Church does is ordered by reference to doctrine.
55. Apart from the definition provisions of s.74 of the Constitution the concept of doctrine centrally appears in Part I of the Constitution.
56. The Fundamental Declarations in section 3 refer to "His (Christ's) doctrine".
57. There are four references to doctrine within the Ruling Principles which are sourced in BCP, the Ordinal and the 39 Articles.
58. Of the 11 references to "doctrine" in the Constitution one appears in the Fundamental Declarations (section 3), four appear in the Ruling Principles (section 4), two appear in section 58(1) and the balance appear in the definition provisions of section 74.

Constitutional definitions

59. "Doctrine" is defined in the Constitution as meaning the teaching of the Church on any question of faith: section 74(1).
60. The reference to the doctrine and principles of the Church of England embodied in the BCP and the 39 Articles means the body of such doctrine and principles: section 74(3).
61. Further, unless the context or subject matter otherwise indicates, any reference in the Constitution to "faith" shall extend to doctrine: section 74(4).
62. "Faith" includes the obligation to hold the faith: section 74(1).
63. Whilst the concept of doctrine is centred in the two Chapters of Part I of the Constitution, it is defined by reference to the teaching of the Church on any question of faith.
64. The concept of faith is connected in various ways under the Constitution with other principles including "ritual", "ceremonial" and "discipline".
65. "Ritual" includes rites according to the use of "this Church", and also the obligation to abide by such use: section 74(1).

66. "Ceremonial" includes ceremonial according to the use of "this Church", and also the obligation to abide by such use: section 74(1).
67. "Discipline" is specifically defined by reference to where the term appears in the Constitution. With the exception of the Chapter dealing with the Tribunals (Chapter IX) discipline is defined to mean the obligation to adhere to, to observe and to carry out (as appropriate): (i) the faith, ritual and ceremonial of "this Church"; and (ii) the other rules of "this Church" which impose on the members of the clergy obligations regarding the religious and moral life of "this Church": section 74(1).
68. It has been said that the distinction between a "rite" and a "ceremony" is that the former consists in services expressed in words and the latter in gestures proceeding, accompanying or following the utterance of these words.¹³
69. Further, it has been commented that the distinctions are not always easy although for practical purposes, "Ritual" is "what we do; "Ceremonial" is "how we do it" and "Discipline" is "who does it"¹⁴.
70. Those simple distinctions do not completely encompass the content of "ritual", "ceremonial" and "discipline" for the purposes of the Constitution. For example, it is clear that discipline means not merely "who" does "what we do".
71. However, as is evident below, that comment highlights that there is a clear distinction between *what* is believed on the one hand and how what is believed is performed or carried out within the church and the obligation to adhere to what is believed.
72. There is scattered throughout the Constitution a gathering of defined words including:
- (a) "faith, ritual, ceremonial or discipline"¹⁵;

¹³ Sir Robert Phillimore in *Martin v Mackonochie* (1868) LR 2 A&E 116 at 135-136 cited by Rupert D.H. Bursell "Liturgy, Order and the Law (1996) at 71.

¹⁴ The Bishop of Armidale Reference concerning Diaconal and Lay Presidency - Determination of the Appellate Tribunal dated 24 December 1997 at page 71.

¹⁵ Sections 29(7)(a), 54(2), 54(4), 55(3), 56(6), 59(1), 71(2), 72, 73(1) x2

- (b) "faith, ritual or ceremonial"¹⁶;
- (c) "ritual, ceremonial or discipline"¹⁷; and
- (d) "ritual or ceremonial"¹⁸.

73. "Faith" appears in the Constitution on twenty-two occasions.

74. In the Fundamental Declarations there is reference to:

- (a) the Christian Faith – set forth in the Creeds (section 1); and
- (b) "the ultimate rule and standard of faith" as received in the Bible.

75. In the Ruling Principles there is reference to the Church making statements as to the faith of the Church (as well as to statements of ritual, ceremonial or discipline).

76. The Church may make statements as to "faith" but only subject to the terms of the Constitution: section 26.

77. To understand more precisely what is meant by "doctrine" within the meaning of section 74(1) and elsewhere in the Constitution it is necessary to understand the phrase "any question of faith". Apart from the interpretation provisions of section 74, the references in Chapter 1 and section 26 the word "faith" is variously coupled with the concepts of "ritual", "ceremonial" and "discipline" where used elsewhere throughout the Constitution.

78. There are generally speaking seven types of references to "faith" where used in the Constitution, namely references to:

- (a) holding the Christian Faith: section 1;
- (b) the standard of faith: section 2
- (c) statements of faith: sections 4 and 26;
- (d) questions of faith: section 54(4), 59(1), 72, 73(1);

¹⁶ Sections 54(3) x 2, 61(2)(b), 74(9)

¹⁷ Sections 26, 28(1), 28A(1), 29(4), 29(11), 30(a), 67(1)(a)(i)

¹⁸ Section 71(1)

- (e) charges of breaches of faith: section 54(2), (3), section 55(3), section 56(6), section 61(2);
- (f) the law relating to faith: section 71(2), and
- (g) the obligation to adhere to, to observe, and carry out the faith: section 74(9).

79. It is evident by use of the word "faith" in the Constitution particularly where coupled with the concepts of "ritual", "ceremonial" and "discipline" that what is being referred to, are the core beliefs and practices of the Church¹⁹.
80. This appears from the fact that there is an obligation both on clergy and otherwise to adhere to, to observe and to carry out the faith, the fact that charges of breach of faith can be brought for which clergy are disciplined and that questions of faith can be referred to the Appellate Tribunal.
81. It is accepted, as Wangaratta contend, that the Constitution makes a distinction between "faith" on the one hand and "ritual, ceremonial or discipline" on the other hand.
82. However, what is disputed is the further Wangaratta contention that references to "*faith*" for the purposes of doctrine in the Constitution are to be understood as references to those matters about which there was and is no dispute, being confined to those matters contained in the Fundamental Declarations: WS 44, 47, 50.
83. That is not a distinction which is evident from the structure of the Constitution. Rather, matters of "faith" extend to doctrine sourced both in the Fundamental Declarations and the Ruling Principles.
84. A number of observations may be made.
85. Firstly, by section 26, whilst the General Synod may, subject to the terms of the Constitution:

¹⁹ "Marriage, Same-Sex Marriage and the Anglican Church of Australia – Essays from the Doctrine Commission" Broughton Publishing Pty Ltd (2019) – "The Doctrine of Marriage of the Anglican Church of Australia" – The Rt Rev'd Dr Michael R. Stead ("Stead") at 32-33

- (a) make canons in respect of *ritual, ceremonial and discipline*;
- (b) it may only make statements as to faith of the Church²⁰.

86. Section 26 does not limit the statements as to faith to statements regarding the Fundamental Declarations.

87. Secondly:

- (a) there is a special bill process to be followed for canons which deal with or concern the *ritual, ceremonial or discipline* of the church: section 28;
- (b) but there is no power in the Constitution to make canons in respect of the faith of the Church²¹.

88. There is no lawmaking power in respect of matters of “faith” – because such matters of “faith” are established by the Fundamental Declarations and the Ruling Principles²².

89. Thirdly, the distinction between “faith” on the one hand and “ritual, ceremonial or discipline” on the other hand is reinforced by the dichotomy of questions which may be put to the Appellate Tribunal about an Act or Proposal of General Synod.

90. The types of questions that may be put to the Appellate Tribunal distinguish between whether any part of the Act or Proposal identified in the reference:

- (a) Is Inconsistent with the Fundamental Declarations or the Ruling Principles?
- (b) Deals with or concerns or affects the ritual, ceremonial or discipline of the Church?

91. The first type of question addresses the *faith* of the Church and the second type of question addresses the *ritual, ceremonial or discipline* of the Church.

²⁰ See Stead at 33

²¹ See Stead at 33

²² See Stead at 33

92. The proper understanding of faith for the purposes of the definition of doctrine in the Constitution is not that faith is confined to doctrine arising from the Fundamental Declarations (WS44, 47,50), but rather that doctrine sourced from:
- (a) the Fundamental Declarations (sections 1-3) is not susceptible to change; and
 - (b) the Ruling Principles (sections 4-6) is susceptible to change but only consequent upon meeting thresholds of voting mandate.
93. The Church cannot pass a canon which is inconsistent with the Fundamental Declarations: section 66.
94. On the other hand, the Church can pass a canon to change the Ruling Principles – but only with high thresholds of voting: section 67(1)(c).
95. The distinction is recognised in section 29 in that an Act which is inconsistent with the Fundamental Declarations and an Act other than a canon to alter the Ruling Principles, which is inconsistent with the Ruling Principles shall to the extent of the inconsistency be void: section 29(10).
96. In order to differentiate between doctrine arising from the Fundamental Declarations on the one hand and doctrine arising from the Ruling Principles on the other hand it is convenient to describe such a doctrine as “Level 1” and “Level 2” doctrine respectively²³.
97. The structure of Chapters I and II of the Constitution have otherwise been described by Justice Bleby²⁴ in terms consistent with there being both Level 1 and Level 2 doctrine in that:
- (a) Chapter 1 (sections 1-3) is a broad fundamental statement of the Christian faith, generally acceptable to any mainline Christian denomination, but not

²³ Stead at 34

²⁴ Celebration of Holy Communion by Deacons or Lay Persons Determination of the Appellate Tribunal 24 December 1997 per Justice Bleby at 33 accepting a submission of the Diocese of Brisbane

particularly Anglican in its doctrine (although expressed from an Anglican perspective); and

- (b) That Chapter 2 (sections 4-6) is the “Anglicising” of the broad statements set out in Chapter 1, and in particular section 4 attempts to set out the doctrinal position of the Anglican Church,

98. If the Wangaratta contention that references to “*faith*” for the purposes of the definition of doctrine in the Constitution are to be understood as references to those matters about which there was and is no dispute, being confined to those matters contained in the Fundamental Declarations, it would lead to the surprising result that within the Anglican Church of Australia all the references in the Constitution to: the standard of faith²⁵; statements of faith²⁶; questions of faith²⁷; charges of breaches of faith²⁸; the law relating to faith²⁹; the obligation to adhere to, to observe, and carry out the faith³⁰ are to be interpreted as relating only to fundamental statements of Christian faith (but not particularly Anglican) on the one hand and specifically excluding Anglican doctrine on the other hand.
99. The proper construction is that faith for the purposes of the definition of doctrine in the Constitution is established by both the Fundamental Declarations and Ruling Principles.
100. Potentially a third field of doctrine lies outside the Constitution: see *Scandrett v. Dowling* (1992) 27 NSWLR 483 at 493D-E, 494E per Mahoney JA.
101. The lawmaking power of the General Synod which is described as being plenary, is nonetheless subject to the requirements that it must be consistent with the Fundamental Declarations (Level 1 doctrine) and not contravene any principle of doctrine or worship laid down in the formularies (Level 2 doctrine): sections 4 and 5 Constitution³¹.

²⁵ Section 2

²⁶ Sections 4 and 26

²⁷ Section 54(4), 59(1), 72, 73(1)

²⁸ Section 54(2), (3), section 55(3), section 56(6), section 61(2)

²⁹ Section 71(2)

³⁰ Section 74(9)

³¹ Stead at 34

102. The standard of Level 1 doctrine is established by the creeds, canonical scriptures, commands and doctrine and discipline of Christ, the two sacraments and threefold order³².
103. The standard of Level 2 doctrine is established by the formularies (BCP, Ordinal and the 39 Articles)³³.
104. The Constitution in identifying doctrine within the formularies refers to “principles of doctrine and worship” within the formularies: section 4 Constitution.
105. The distinction is in essence between “principles of doctrine and worship” on the one hand and other matter which might generally be described as “practices”.
106. As observed by Justice Young the phrase “principle of doctrine or worship” is a fundamental axiom of faith whereby further doctrinal or doxological statements may be articulated.³⁴ Such a principle of doctrine or worship is distinguished from a moral or behavioural principle rule of conduct or discipline³⁵.
107. Put another way the principles of doctrine and worship are those matters which arise from theological and/or scriptural rationale on the one hand as distinct from “practices” arising from the social circumstances of the age or practical or pragmatic arrangements of the time³⁶.

Recourse to constitutional drafts

108. Firstly, the assertion in the Wangaratta Submissions that in construing terms used in the Constitution, it is proper for the Tribunal to have regard to the history of the Church and, in particular to earlier drafts of the Constitution (WS35³⁷) requires qualification.

³² Stead at 34

³³ Stead at 34

³⁴ Justice Young at 109 in the 1987 Decision

³⁵ Justice Young at 109 in the 1987 Decision

³⁶ Stead at 34-35

³⁷ The reference for the proposition is to the November 1989 Decision at page 7

109. The meaning of “doctrine” for the purposes of the Constitution is primarily a question of construction. Construction begins with a consideration of the text itself.
110. Subject to what is noted below regarding opinions of the Appellate Tribunal, conventionally speaking in law historical considerations and extrinsic materials cannot be relied upon to displace the clear meaning of the text.
111. Nonetheless the meaning of the text may require consideration of the context, which includes the general purpose and policy of a provision. The construction requires deciding the legal meaning of the relevant provision by reference to the language of the instrument viewed as a whole.
112. The context, general purpose and policy of a provision and its consistency and fairness are surer guides to its meaning than the logic with which it is constructed: *Certain Lloyd’s Underwriters v. Cross* (2012) 248 CLR 378 at [23]-[24]; see also *Primate’s Reference re Bishop Administrators and the House of Bishops* – Appellate Tribunal decision 25 August 2017 p.4.
113. Determination of the purpose of a statute or of a particular provision of a statute may be based upon an express statement of purpose in a statute itself, inference from its text and structure and, where appropriate, reference to extrinsic materials. The purpose of a statute resides in its text and structure. Determination of a statutory purpose neither permits nor requires some search for what those who promote it or pass the legislation may have had in mind when it was enacted: *Certain Lloyd’s Underwriters v. Cross* at [25].
114. The Tribunal’s comment³⁸ that in questions as to the proper interpretation of the Constitution it is appropriate to act upon the history of the Church and to earlier drafts of the Constitution to assist it in construing the Constitution is expressly qualified by the words “within limits”. The Tribunal stated that the words “within limits” are used with

³⁸ WS35 - referring to the November 1989 Decision at page 7

respect to drafts with the Tribunal bearing in mind that when construing deeds, normally drafts can only be looked at if the document being construed is ambiguous³⁹. In any event, recourse to earlier drafts of the Constitution are a poor substitute for considering the terms of the Constitution as enacted.

115. Secondly, the assertion in the Wangaratta Submissions that some form of compromise was made on all sides on the status of the BCP and the 39 Articles in the Constitution (WS38) such that references to “faith” in the Constitution are to be understood as references to those matters about which there was and is no dispute (WS44), being confined to those matters contained in the Fundamental Declarations (WS44) is incorrect or at least overstated.

116. The constitutional drafts in 1932 and 1946 provided that what are now the Fundamental Declarations and Ruling Principles could be changed with the assent of all dioceses. This changed in the 1951 draft (as now reflected in the Constitution) to differentiate between Fundamental Declarations and Ruling Principles. The Fundamental Declarations became unalterable and the Ruling Principles could be changed with the assent of three-quarters of all dioceses including the metropolitans⁴⁰.

117. What changed in 1951 was the threshold for change, not the rule that:

No alteration in or permitted variations from the services or Articles therein contained shall contravene any principle of doctrine or worship laid down in such standard.” (Section 4).

118. It allowed for the possibility of change to section 4 itself, should circumstances change in unforeseen ways, and set a very high bar (three-quarters of all dioceses including all metropolitans) for change.

119. The preface to the 1955 draft states that the intention or endeavour was to:

³⁹ November 1989 Decision at page 7

⁴⁰ John Davis “Australian Anglicans and Their Constitution” Acorn Press (1993) at page 139

So to order those portions of the Constitution which relate to the doctrine and worship of the Church of England as 'to keep the mean between two extremes'; to make provision, on the one hand, for such reasonable alterations in our existing formularies as the circumstances of the time may demand; and, on the other, to exclude from such alteration anything that might 'strike at some established Doctrine, or laudable practice of the Church of England':" (cited in Davis at 154-155).

120. Thus, clearly the intention was to provide a safeguard for the doctrines and principles of the formularies. It was not, as Wangaratta claims in WS40, "designed to accommodate those divisions save on matters essential to the nature and character of the Anglican Church as part of the One Holy Catholic and Apostolic Church".
121. It is hardly to be thought that the Constitution limits questions of faith to only doctrine sourced in the Fundamental Declarations and excludes an entire body of doctrine referred to in the Ruling Principles particularly in circumstances where the word "doctrine" is used in section 4 on four occasions (of the total of 11 occasions including section 4 where it is used in the Constitution).
122. Therefore, to summarise, 'doctrine' for the purposes of the Constitution is to be identified from the following:

Level 1: Fundamental Declarations

- (a) "Christian Faith as professed by the Church of Christ from primitive times" (s.1).
- (b) The commands of Christ,... His doctrine, [or] His discipline" (s.3), or otherwise arising from the "rule and standard of faith" from "the canonical scriptures of the Old and New Testaments" (s.2).

Level 2: Ruling Principles

- (c) The “principle[s] of doctrine or worship” in the BCP, the Ordinal or the 39 Articles (s.4).
- (d) Principles, which in 1962 were principles of the Church of England embodied in the BCP, the Ordinal or the 39 Articles and which has therefore been retained by this church (s.4) and not been altered by any exercise by the General Synod of its plenary authority as described in section 4 of the Constitution.

The Doctrine of Marriage of the Anglican Church of Australia

123. The doctrine of marriage in the Anglican Church in Australia is that marriage is the voluntary union of one man and one woman arising from mutual promises of lifelong faithfulness.

124. This understanding of our doctrine of marriage has been affirmed by a succession of General Synod resolutions, most recently in two resolutions passed in 2017.⁴¹ This doctrine of marriage was also recently affirmed by the General Synod Doctrine Commission in its response to questions put by the Church Law Commission on 20 February, 2019. The Doctrine Commission stated:

The Doctrine Commission is of the view that the doctrine of our church is that marriage is a union between one man and one woman. This is a “doctrine” in the sense in which that word is used in section 4 of the Constitution – it is a “principle of doctrine” that is contained within the BCP (in particular, in the Form of Solemnization of Holy Matrimony), and thereby a doctrine that has been “retained” by this Church.

⁴¹ 2004: Resolutions 61–64, 2007: Resolution 52, 2010: Resolution 156, 2017: Resolution 48, Resolution 51.

125. Sydney propose to demonstrate that this doctrine of marriage is a 'doctrine' for the purposes of the Constitution by answering the following 4 questions that are based on the constitutional framework for doctrine:

- (a) **Is the doctrine that marriage is between a man and a woman part of the "Christian Faith as professed by the Church of Christ from primitive times" (s.1)?**
- (b) **Is this a doctrine arising from "the commands of Christ, ... His doctrine, [or] His discipline" (s.3), or otherwise arising from the "rule and standard of faith" from "the canonical scriptures of the Old and New Testaments" (s.2)?**
- (c) **Is this a "principle of doctrine or worship" in the BCP, the Ordinal or the 39 Articles? (s.4)**
- (d) **Is this a principle, which in 1962 was a principle of the Church of England embodied in the BCP, the Ordinal or the 39 Articles and which has therefore been retained by this church? (s.4) If yes, has this principle been altered by any exercise by the General Synod of its plenary authority as described in section 4 of the Constitution?**

QUESTION (a): *Is this doctrine part of the "Christian Faith as professed by the Church of Christ from primitive times" (s.1)?*

126. The Rev Dr Mark Earngey, Head of Church History at Moore Theological College has prepared the paper set out at **Annexure A** which provides an overview of the doctrine of marriage that has been professed by the Church of Christ from primitive times. Dr Earngey concludes that:

8

“The core doctrine of marriage – between one man and one woman – has remained remarkably and entirely consistent in the teaching of the Church of Christ throughout the last two millennia.”

QUESTION (b): *Is this a doctrine arising from “the commands of Christ,... His doctrine, [or] His discipline” (s.3), or otherwise arising from the “rule and standard of faith” from “the canonical scriptures of the Old and New Testaments” (s.2)?*

127. Although in the structure of the Constitution, Scripture (s.2) precedes the commands of Christ (s.3), it is helpful to take these matters in reverse order since the teaching of Christ is part of the canonical scriptures.

The Command, Doctrine and Discipline of Christ⁴²

128. The doctrine that marriage is between a man and a woman is the clear and unambiguous teaching of Christ in Matthew 19. Jesus’ teaching in Matthew 19 arises in the context of a question about divorce and the scope of Deuteronomy 24:1 (Matt 19:3–9; Mark 10:2–12). Jesus’ answer indicates that the dissolution of marriage can only rightly be understood in light God’s foundational purpose for marriage. For this reason Jesus begins with Genesis 2:24 which describes the marriage of the first man and woman—with complementary sex and gender, and places that statement in the context of the even earlier statement that humanity was created by God in his image, male and female (Gen 1:27; Matt 19:4).

129. In doing so Jesus shows there is a creational logic to the nature of marriage.⁴³ It is not just that one person chooses to leave the family home and be joined to another, and their bodily sex is not significant. Rather, ‘from the beginning’ the Creator created mankind as sexually differentiated beings, male and female, and ‘for this reason’ a man

⁴² The material in this section has been adapted from the essays by Claire Smith and Michael Stead in “Marriage, Same-Sex Marriage and the Anglican Church of Australia – Essays from the Doctrine Commission”, with the permission of those authors.

⁴³ Cf. 19:5 ‘Therefore’ (*eneka toutou*); 19:6 ‘So’ (*hoste*).

and woman are joined in marriage—two equal and complementary image-bearers joined by God to be ‘one flesh’, united in a covenantal relationship unlike any other. One flesh in their exclusive sexual union, in the new family unit they create, in their companionship, and potentially, in offspring.⁴⁴

130. That is, the very nature and purpose of marriage require that the two are complementary - male and female. Only a male and a female can fulfil the mandate of Genesis 1:28 to “be fruitful and multiply and fill the earth.” Jesus tells the Pharisees that this pattern of marriage has been “from the beginning” indicating that from the time of creation and to the present day God’s purposes remain unchanged.
131. In relation to divorce, Jesus uses the principle of Genesis 2, that “the two shall become one flesh” to conclude that marriage is something that God has joined together in a permanent union and therefore mankind should not break this bond (Matthew 19:5-6). Jesus teaches that it is only in this context that the concession of Deuteronomy 24 regarding divorce can be understood. Marriage is not to be broken lightly but can be broken by a hardness of heart that leads to adultery.
132. Rightly understanding Jesus’ teaching about the permanence of marriage leads the disciples to conclude: “If such is the case of a man with his wife, it is better not to marry” (Matthew 19:10). In response, Jesus spells out in consequences of not being in a one-flesh union between a man and wife – it entails a life of sexual abstinence (Matthew 19:11-12). Jesus uses the metaphor of a eunuch both literally and metaphorically in these verses – the eunuch ‘for the sake of the kingdom’ is the one who has forsworn sexual activity out of obedience to the commands of God.
133. It is clear that Jesus only contemplates two possibilities: either an exclusive sexual marriage union between a husband and wife or celibacy in singleness. This

⁴⁴ G. Wenham, *Genesis 1–15* (Waco, TX: Word, 1987), 71.

understanding of the teaching of Christ has shaped the teaching and practice of the church since the primitive times.

134. Wangaratta argue that the Appellate Tribunal is not competent to resolve any disputable matters arising from different interpretations of the Scriptures. Whether or not this is true in some cases, the present matter is not such a case. This is not an instance where there is a balance of arguments from the Scriptures about the nature of marriage – that is, there are some Scriptures that say that God’s pattern for marriage is between a man and a woman, and other Scriptures that say (or suggest or even offer the remotest hint) that God’s pattern for marriage could include same-sex marriages. There is simply no scriptural support for this latter proposition.
135. The doctrine of Christ must be constituted by the words of Christ’s teaching, and cannot be established from silence. Section 3 of the Constitution binds us to the commands, doctrine and discipline of Christ. The doctrine of Christ cannot be overturned by an argument from silence nor can it be established from silence rather it is established by the ‘commands’ and ‘discipline’ of Christ. There is nothing anywhere in the teaching of Jesus that would either establish the principle of same-sex marriage or in any way permit any kind of alternative other than the two options countenanced in Matthew 19 of heterosexual marriage or celibate singleness.
136. If the Appellate Tribunal were not able to conclude that Christ’s teaching in Matthew 19 establishes that marriage is necessarily between a man and a woman, then Section 3 of the Constitution has been rendered meaningless, which cannot have been the intention of the framers of our Constitution. This is because Jesus could not have been more explicit in Matthew 19 that marriage involves a “male and a female” (ἄρσεν καὶ θῆλυ), where “a man shall leave his father and his mother and hold fast to his wife, and the two shall become one flesh”. If, on the basis of teaching as clear as this that it is not possible to come to the conclusion that man/woman marriage is part of the “commands”, “doctrine” or “discipline” of Christ, then it would not be possible to

establish ANY doctrine of Christ from his teaching, thereby nullifying the clear intent of Section 3. That the framers of the Constitution would have contemplated that the Church would be unable to discern ANY doctrine of Christ from his teaching is plainly absurd.

The Implication of the Christ's doctrine of marriage

137. Christ's doctrine of marriage has wider implications for the appropriate expression of human sexuality. Adultery and sexual immorality (μοιχεῖται and πορνείαι) are concepts which are derived from the doctrine of marriage – adultery means intercourse involving a married person with someone other than their spouse and sexual immorality covers the range of sexual activity outside the marriage bond. Jesus' teaching on these matters is clearly expressed in Matthew 15 – sexual immorality and adultery are among those things which “come out of the heart that defile a person” (Matthew 15:19). If the church were to permit – or even more – to bless adultery or sexual immorality the church would be acting contrary to the commands, doctrine and discipline of Christ.
138. Since Christ in Matthew 19 defines marriage as a union between a man and a woman, two things necessarily follow. Firstly, affirming the validity of a same-sex marriage is contrary to the doctrine of Christ. Secondly, a same-sex union involves πορνείαι (sex outside the heterosexual marriage bond) and therefore contrary to the commands, doctrine and discipline of Christ. It is irrelevant that the civil society may have adopted a definition of marriage which is inconsistent with Christ's definition. For both of these reasons, a same-sex marriage is contrary to the command, doctrine and discipline of Christ.

The “rule and standard of faith” from “the canonical scriptures of the Old and New Testaments”

139. Section 2 of the Constitution makes the “the canonical scriptures of the Old and New Testaments” the “rule and standard of faith” of our Church. The teaching of the wider canonical scriptures in relation to marriage and appropriate expression of human

sexuality is entirely consistent with the commands, doctrine and discipline of Christ discussed above. There are two sets of scriptural arguments that have bearing on the current question, firstly regarding teaching about marriage and secondly that same-sex sexual activity is contrary to the will of God.

Marriage

140. The fabric of biblical revelation begins with a human marriage (Gen 2:23–24, cf. Gen 1:27) and ends with the marriage of the bride and the Lamb, and where the structure of the former is based on the latter. In fact, there is a consistent understanding of marriage throughout the Bible—notwithstanding aberrations such as polygamy, adultery and divorce—namely, that marriage is the union of two people of opposing biological sex, and that this sexed complementarity is essential and not incidental to the nature and purpose of marriage.
141. It is sometimes argued that the Old Testament does not provide a prescriptive pattern of marriage that God has established for all people, and that it merely describes how Israel had adopted and adapted the practices of marriage from the culture around them.
142. Is there a definition of marriage in the Bible? It is important to distinguish between a MUST definition and a SHOULD definition. The Bible's definition of marriage is a SHOULD definition—'this is how things SHOULD be'—which can recognise departures from the norm as still being marriage (albeit less than perfect ones). To take the example of polygamy, multiple wives is clearly a departure from the Genesis 1–2 pattern of one man and one woman, but a polygamous marriage is still a marriage. However, as the storyline of the Old Testament unfolds, it is clear that polygamy is a poor version of marriage precisely because it departs from the pattern—it is not how things SHOULD be. Another way of putting this is to say that the Bible establishes God's **normative pattern** for marriage.

143. The aberrant forms of marriage in the Old Testament do not invalidate the God-given pattern of marriage, any more that the proliferation of idolatrous worship in the Old Testament invalidates God's commandment against idolatry. The only thing that aberrant practice demonstrates is that God's people are not very good at obeying God's commands.

Same-sex Sexual Activity

144. The key Scriptural texts in relation to same-sex sexual intimacy are Romans 1 and 1 Corinthians 6 (understood in light of Leviticus 18). For those who wish to argue for same-sex marriage and consider themselves bound by what Scripture allows and prohibits, it is essential to demonstrate that Romans 1 and 1 Corinthians 6 do not apply to consensual and committed same-sex sexual intimacy. An example is this is the argument of Steve Chalke, that: "what the New Testament writers have in mind when they refer to homosexual practice could not have been the loving and stable same-sex unions of the sort that exist today, of which they knew nothing."⁴⁵

Romans 1

145. In relation to Romans 1, this argument is based on three interrelated claims.

146. It is **not** addressed to those who are, by nature, attracted to those of the same-sex, but to heterosexual persons who 'reject their natural orientation'. As Fr. Rod Bower put it on ABC Q&A, 'what the Bible is really saying, if anything, is that heterosexual people shouldn't have gay sex'.⁴⁶

147. It is **not** addressed to consensual gay sex, but to those who engage in abusive and predatory gay sex.

⁴⁵ S. Chalke, 'A Matter of Integrity: The Church, Sexuality, Inclusion and an Open Conversation', <https://www.openchurch.network/sites/default/files/A%20MATTER%20OF%20INTEGRITY.compressed.pdf>.

⁴⁶ Q&A, 28 May 2018, <https://www.abc.net.au/tv/qanda/txt/s4837221.htm>.

148. It is **not** addressed to committed (i.e., monogamous) gay sexual relationships, but only to uncontrolled promiscuity and licentiousness.

149. These three claims are essential to the argument that Romans 1 does not apply to consensual and monogamous same-sex relationships. Each of these three claims is contradicted by Romans 1.

Claim 1 - It is not addressed to those who are, by nature, attracted to those of the same-sex, but to heterosexual persons who 'reject their natural orientation'

150. Claim 1 takes the phrase 'contrary to nature' (*para phusin*) in Rom 1:26 to mean 'contrary to their own nature'. This is an unnatural reading, proposed by Boswell in 1980,⁴⁷ which has been repeatedly shown to be untenable.⁴⁸ The argument is untenable because Rom 1:26–27 itself defines what Paul means by 'natural', by contrasting 'natural relations' with those 'against nature'.⁴⁹ In verse 27 Paul explains that 'natural relations' for men are relations 'with women', whereas those who forsake natural relations become 'inflamed with lust [for men]' (NIV). That is, in the internal logic of Rom 1:27, it is 'against nature' for a man to be 'inflamed with lust for men'. 'Against nature' is thus an objective standard, rather than a reference to the subjective

⁴⁷ Argued in J. Boswell, *Christianity, Social Tolerance, and Homosexuality* (Chicago: University of Chicago, 1980), 109—'the persons Paul condemns are manifestly not homosexual: what he derogates are homosexual acts committed by apparently heterosexual persons.'

⁴⁸ See, for example, R. B. Hays, 'Relations Natural and Unnatural: A Response to John Boswell's Exegesis of Romans 1' *Journal of Religious Ethics* 14 (1986), 184–215; J. B. De Yong, 'The Meaning of 'Nature' in Romans 1 and Its Implications for Biblical Proscriptions of Homosexual Behavior' *JETS* 31 (1988), 429–441; M. Davies, 'New Testament Ethics and Ours: Homosexuality and Sexuality in Romans 1:26–27' *Biblical Interpretation* 3 (1995), 319–20; R. A. J. Gagnon, *The Bible and Homosexual Practice: Texts and Hermeneutics* (Nashville, TN: Abingdon, 2001), 380–92. J. Dallas & N. Heche, *The Complete Christian Guide to Understanding Homosexuality* (Eugene: Harvest House, 2010), 131–33.

⁴⁹ This verse does not say that they 'abandoned natural desires', but that they 'abandoned natural relations' (*chresis*).

desires of the individual.⁵⁰ This is also true in the wider Greco-Roman usage of the phrase 'against nature'.⁵¹

151. The description of the behaviour in verses 26–27 is not of heterosexual men dabbling in homosexual sex—these men 'abandoned natural relations with women and were inflamed with lust for one another'.
152. Furthermore, if this interpretation was correct, it has the implication that being 'inflamed with lust for men' is only 'wicked' if it doesn't come naturally. But this would have the untenable implication that all the other sins listed in Romans 1—envy, covetousness, pride, etc.—would also not be sinful if they came naturally. The rhetorical goal of Paul's argument in Romans 1–2 is to establish that all people are 'without excuse'. The interpretation of those like Chalke leads to the opposite conclusion—that some people have an excuse, because their homosexual desires come naturally.
153. Furthermore, the claim made by Matthew Vines (and others) that 'the concept of same-sex orientation didn't exist in the ancient world'⁵² is incorrect. After an extensive review of ancient Greco-Roman sources, Preston Sprinkle concludes:

... there were many men who preferred to have sex with the same gender and were even believed to have been biologically oriented this way. Some may have been considered masculine by ancient standards; others may have been viewed as feminine. But such men, who preferred sex with men over women

⁵⁰ Paul uses the same phrase in Romans 11:24 to refer to God's 'unnatural' grafting of wild branches onto olive tree as a metaphor for the inclusion of Gentile. Paul writes 'you were cut out of an olive tree that is wild by nature (*kata phusin*), and contrary to nature (*para phusin*) were grafted into a cultivated olive tree.' Here, 'contrary to nature' means 'contrary to the natural order of things', not 'contrary to the nature of the wild branch'.

⁵¹ Plato's *Laws*, (636C), 'When male unites with female for procreation, the pleasure experienced is held to be due to nature (*kata phusin*), but contrary to nature (*para phusin*) when male mates with male or female with female.'
<http://www.perseus.tufts.edu/hopper/text?doc=plat.+laws+1.636c>, Josephus, *Against Apion* 2.273, 'And why do not the Eleans and Thebans abolish that unnatural (*para phusin*) and impudent lust, which makes them lie with males',
<http://www.perseus.tufts.edu/hopper/text?doc=Perseus%3Atext%3A1999.01.0216%3Abook%3D2%3Asection%3D262>, Philo, *Spec. Laws* 3.39, 'let the man who is devoted to the love of boys submit to the same punishment, since he pursues that pleasure which is contrary to nature (*para phusin*)', <http://www.earlychristianwritings.com/yonge/book29.html>. See further R. B. Ward, 'Why Unnatural? The Tradition behind Romans 1:26-27' *HTR* 90.3 (1997) 263–84.

⁵² M. Vines, *God and the Gay Christian: The Biblical Case in Support of Same-Sex Relationships* (New York: Convergent Books, 2015), 102.

(sometimes exclusively) would have been considered (and considered themselves) at the very least bisexual or even gay today.⁵³

154. Similarly, Branson Parler concludes:

Though the NT thought world did not use our modern terminology of sexual orientation, the time frame from Plato to Ptolemy shows that thinkers of antiquity were well aware that sexual inclination was often fixed and not a matter of mere volition.⁵⁴

155. Thus, those who argue a version of claim 1 are caught on the horns of a dilemma. On the one hand (or horn), if (against the evidence) they assert that Paul had no understanding of homosexual orientation, their argument nonetheless depends on the concept of 'orientation' to interpret the passage—'contrary to nature' in essence means 'contrary to one's personal sexual orientation'. But if Paul didn't know about *homosexual* orientation, then it is not logical to assert that he is only addressing *heterosexuals* acting contrary to their nature in Rom 1. As Richard Hays comments:

...to suggest that Paul intends to condemn homosexual acts only when they are committed by persons who are constitutionally heterosexual is to introduce a distinction entirely foreign to Paul's thoughtworld and then to insist that the distinction is fundamental to Paul's position.⁵⁵

156. But on the other hand (or horn), if they accept that Paul was aware of men whose sexual inclination was for other men (and likewise women, for women), then it is clear that Paul is also speaking against those sexual practices, because there is no 'bracketing out' of those with innate desires.

⁵³ P. Sprinkle, 'Romans 1 and Homosexuality: A Critical Review of James Brownson's Bible, Gender, Sexuality' *BBR* 24.4 (2014) 515–28, at 525.

⁵⁴ B. Parler, 'Worlds Apart?: James Brownson and the Sexual Diversity of the Greco-Roman World' *TrinJ.* 38NS (2017) 183–200, at 200.

⁵⁵ Hays, 'Relations Natural and Unnatural', 200.

*Claim 2—That Romans 1 only addresses abusive/predatory same-sex sexual intimacy.*⁵⁶

157. There is nothing in the language of Romans 1 that would suggest it is limited to abusive or predatory same-sex sexual intimacy.
158. Romans 1:26–27 refers to ‘degrading passions’, men who are ‘consumed with passion’ for one another, and who committed ‘shameless acts’ with other men. This passage does not use any of the Greek words for pederastic relationships.⁵⁷ It explicitly refers to man-to-man,⁵⁸ not man-to-boy sexual intimacy. There are no words that suggest prostitution, and the fact that both parties to the sex act are equally culpable undercuts the argument that this is only addressed to slaves used for sexual purposes, since the slave who had no choice in the matter should not be culpable.
159. Some versions of claim 2 recognise that there is nothing in the language of Romans 1 that limits its application to abusive or predatory same-sex sexual intimacy, but instead argue that the **only** forms of same-sex sexual intimacy of which Paul was aware were those which involved ‘domination, control, lack of consent, and lack of mutuality’⁵⁹ such as pederasty, slavery or prostitution—or to say the same thing another way, that Paul knew nothing of ‘the loving and stable same-sex unions of the sort that exist today’ (Chalke).
160. Claim 2 puts those advocating for same-sex marriage in an awkward position. On the one hand, they argue that same-sex orientation is a ‘natural’ and immutable variation of human biology. This presumably means that the proportion of same-sex attracted men and women relative to the general population would be more or less the same in antiquity as it is today. On the other hand, they are also arguing that the modern same-

⁵⁶ This argument is developed in full in J. Brownson, *Bible Gender Sexuality: Reframing the Church's Debate on Same-Sex Relationships* (Grand Rapids: Eerdmans, 2013) and Robin Scroggs, *The New Testament and Homosexuality* (Philadelphia: Fortress, 1983).

⁵⁷ In the Greco-Roman world, pederasty (*paidērastēs*) involved a romantic and sexual relationship between an adult male (*erastes*) and a (teenage) boy (*eromenos*).

⁵⁸ Or, to be precise, ‘men-in-men’ (*arsenes en arsesin*).

⁵⁹ Brownson, *Bible, Gender, Sexuality*, 247.

sex relationship was unknown in antiquity, and the only relationships were pederastic or otherwise abusive.

161. The evidence of antiquity attests the existence of consensual and loving same-sex unions. While this supports the argument that there is something innate about same-sex attraction, it fatally undercuts the argument that Paul could not have known about loving and stable same-sex unions.

162. Parler provides a string of examples of 'mutual, consensual same-sex relationships from Greece and Rome', and concludes

Even in the Greek culture that often exalted pederasty, there are numerous examples of consenting adults engaging in same-sex relationships, up to and including life-long commitments. In the Roman culture, which at first was more resistant to Greece but was gradually Hellenized, there are also numerous examples of consenting adults engaging in same-sex relationships, up to and including life-long commitments.⁶⁰

163. Sprinkle conducts a similar analysis, and concludes:

There was a broad spectrum of same-sex relations available to Paul. We cannot assume that Paul only had nonconsensual and unhealthy homosexual relations in view and therefore condemned (only) these types of relations. Paul most probably was aware of at least some consensual, even marital, unions among both men and women to the same gender.⁶¹

164. This evidence means that Chalke's argument—that 'what the New Testament writers have in mind when they refer to homosexual practice could not have been the loving and stable same-sex unions of the sort that exist today, of which they knew nothing'—is unsustainable.

⁶⁰ Parler, 'Worlds Apart?', 198.

⁶¹ Sprinkle, 'Romans 1', 527.

Claim 3—that Romans 1 only addresses uncontrolled promiscuity and licentiousness

165. Claim 3 is similar to Claim 2, and vulnerable to the same refutation—that the evidence of antiquity demonstrates that some same-sex relationships were loving and consensual. There is nothing in the language of Romans 1 to suggest that it only refers to uncontrolled promiscuity and licentiousness same-sex sexual intimacy—it refers to men who are ‘consumed with passion’, using similar imagery to that which Paul applies to heterosexual relationships (‘it is better to marry than to be aflame with passion’—1 Cor 7:9).⁶²
166. In summary, then, these three claims, which are essential to the argument that Paul couldn’t possibly be referring to consensual and committed same-sex relationships in Romans 1, cannot be sustained.

First Corinthians 6:9

167. Those who dispute the traditional understanding of 1 Cor 6:9 (that it refers to the active and passive partners in homosexual sex) argue that the key words *malakoi* and *arsenokoitai* refer only to pederastic or exploitative relationships, and cannot apply to loving, consensual homosexual sex. This is special pleading. There is nothing in the context to suggest that these words should be given a restricted meaning.
168. If Paul had intended to refer to a limited set of homosexual acts, ancient Greek had a well-established vocabulary for this (see footnote 56). Instead, Paul coins a new word—*arsenokoitês*. The word *arsenokoitês* is a compound word made from the components *arsenos* (male) and *koitos/koitê* (literally ‘bed’, but often with sexual connotations). If the meaning of this new word derives from its two components, then an *arsenokoitês* is a ‘male-bedder’ (i.e., a man who sleeps with a man). In response to the claim that it is illegitimate to derive the meaning of the word in this way, labelling

⁶² Cf. the conclusion of Loader, ‘Reading Romans 1’, 134—‘What for Paul makes these strong passions a manifestation of sin is not so much their intensity or excess but their misdirection.’

this as an etymological fallacy, it should be noted that, while the components and origins of a word do not necessarily determine its meaning for all time, in this particular case there are two reasons why the components are very relevant to the meaning in 1 Corinthians 6.

169. Firstly, this is a 'neologism' (a new word). Paul's usage of the word *arsenokoitês* in 1 Corinthians 6 is the first recorded instance in extant Greek literature. Neologisms do not have a wide semantic range, because there is (at that initial point) no other uses to broaden the range of possible meanings. When an author coins a new word, it has a single meaning. To the extent that an author wants readers to understand a neologism, he or she relies on etymology (the meaning derived from the component words) and literary context to guide readers to the meaning of this new word. The constituent elements of other New Testament neologisms provide a reliable guide to the meaning of the new word. The etymology of a neologism, therefore, cannot be dismissed as irrelevant to meaning.

170. Secondly, this particular neologism (*arsenokoitês*) joins together two words used in close proximity in the Old Testament (OT) in Leviticus 18:22 and 20:13:

Lev 18:22 You shall not lie with a male as with a woman
(LXX: *meta arsenos ou koimêthêsê koitên gynaikos*)

Lev 20:13 if a man lies with a man as with a woman
(LXX: *meta arsenos koitên gynaikos*)

171. Given the patterns of Paul's other neologisms elsewhere in the New Testament, it is beyond doubt that the Old Testament context of Leviticus 18:22 and/or 20:13 provides the background source for *arsenokoitês* in 1 Cor 6:9. There are no other clues from the context of 1 Corinthians 6 that suggest a meaning other than that provided by the etymology and Old Testament context of the word *arsenokoitês*, and the pairing with *malakos* (which in the context of this vice list probably refers to the passive partner in

homosexual sex) supports the meaning derived from etymology and the Old Testament—an *arsenokoitês* is a man who has sex with a man. Those who do this, along with fornicators and adulterers, are 'wrongdoers'.

172. Arguments that seek to cast doubt on the meaning of *malakos* are also unpersuasive. For example, Dorothy Lee argues in her essay 'Marriage, Headship and the New Testament' that *malakos* (literally 'soft') is 'difficult to translate'. She argues:

The 'soft' may refer to people who live in luxury (cf. Matt 11:8/Luke 7:25), are in some way effeminate or are morally lax, including sexually. It may refer to the passive partners in anal intercourse.⁶³

173. What is not acknowledged by Lee is that, when *malakos* occurs in the context of homosexual activity, there is no uncertainty – it never means living in luxury, or effeminate in a general way – it means a man "playing the woman" in sex. For example, in the quotation in Annexure B from Philo, there is no ambiguity – the "effeminate" refers to a young man who has sex with a *paiderastês*.

174. These and other attempts to reinterpret Romans 1 and to cast doubt on the meaning of key words in 1 Corinthians 6 are recognised as "extraordinary manoeuvres" even by those who support same-sex marriage. For example, Professor William Loader (a world-recognised expert on homosexuality in the New Testament and ancient world), is convinced that Paul condemns homosexual practice – but notwithstanding this, he believes that the modern church should now embrace homosexual practice, because Paul simply got it wrong at this point. His understanding of scriptural authority allows him to do this, but he recognises the difficult situation of those who wish to affirm same-sex sexual intimacy and at the same time hold to an understanding of scriptural

⁶³ D. Lee, 'Marriage, Headship and the New Testament', in *Marriage, Same-sex Marriage and the Anglican Church of Australia* (Broughton Publishing, Melbourne: 201), p.132.

authority that means Paul and the other human authors of Scripture do not get it wrong.

He comments:

For those of us whose understanding of scriptural authority does not entail such belief we can only stand and wonder at the extraordinary manoeuvres which have been undertaken to re-read Paul as not condemning homosexual relations at all.⁶⁴

175. The arguments being proposed in support of same-sex sexual intimacy are inconsistent with any genuinely Anglican approach to the authority of Scripture. As we have seen, there is no textual warrant for the claim that the Bible is only condemning a subset of homosexual sexual activity, or that its definition of marriage is anything other than intrinsically heterosexual. The paucity (or, perhaps, audacity) of the argument can be seen by applying the same line of reasoning to the biblical prohibition of adultery.

Proposition 1: Marriages in the ancient world were arranged between families, and involved financial provisions with contractual force. The modern conception of “falling in love” and romantic affection as the basis of marriage was unknown in the ancient world.

Proposition 2: The Bible prohibits adultery because it is a breach of contract. The aim was to protect women in a society where a wife who had been abandoned by her husband for another woman was extremely vulnerable.

Proposition 3: Therefore, the biblical prohibition of adultery does not address the situation of a modern marriage where the partners have “fallen out of love” and agreed to allow each other to sleep with other partners. Jesus is silent about this scenario, and therefore we are able to assume that he would have permitted it.

⁶⁴ W. Loader, ‘Reading Romans 1 on Homosexuality in the Light of Biblical/Jewish and Greco-Roman Perspectives of its Time’ *Zeitschrift für die Neutestamentliche Wissenschaft* 108 (2017) 119-149 at 120.

176. Through exegetical extraordinary manoeuvres, 'thou shalt not commit adultery' becomes 'thou shalt not admit adultery'. So too in this debate. The analysis of the scriptures above demonstrate that the rule and standard of faith from the canonical scriptures of the Old and New Testaments is that marriage is necessarily between a man and a woman and that sexual activity outside the heterosexual marriage union is contrary to the will of God.

QUESTION (c): Is this a "principle of doctrine or worship" in the BCP, the Ordinal or the 39 Articles? (s.4)

177. The doctrine that marriage is between a man and a woman is 'a principle of doctrine' that arises from the Form of the Solemnisation of Marriage in the BCP, as determined by the Doctrine Commission in the letter quoted above.

178. There is an important distinction between the 'principles' of BCP and its 'practices'. By virtue of section 4 of the Constitution, it is only the 'principles of doctrine and worship [emphasis added]' of BCP which must not be contravened. There are many matters of 'practice' in BCP arising out of the context of Tudor England, which are no longer appropriate. For example, BCP states that 'yearly at Easter every Parishioner shall reckon with the Parson, Vicar, or Curate, or his or their Deputy or Deputies; and pay to them or him all Ecclesiastical Duties accustomedly due, then and at that time to be paid'. This practice of BCP is not part of the 'doctrine' of the Anglican Church of Australia (even if some ministers or churchwardens might wish it to be so!).

179. The 'principles of doctrine and worship' of BCP are those matters which arise from a theological and/or scriptural rationale, and not just from the social circumstances of the age or practical/pragmatic arrangements of the time. The *Form of Solemnization of Matrimony* in BCP is the principal source for our doctrine of marriage.⁶⁵

⁶⁵ The 39 articles are largely silent on the doctrine of marriage, except Article 32, which affirms that it is lawful for bishops, priests and deacons, 'as for all other Christian men, to marry at their own discretion, as they shall judge the same to serve better to godliness.'

The doctrine of marriage according to 'The Form of Solemnization of Matrimony'

180. The doctrine of marriage arising from the BCP wedding service, as it bears on the question of same-sex unions, can be summarised under 6 headings.

A union between a man and a woman

181. The BCP wedding service unites one man and one woman in marriage. The service 'join[s] together this **Man and this Woman** in holy Matrimony'. The consents and vows have a gendered reciprocity ('N wilt thou have this [**woman/man**] to thy wedded [**wife/husband**]; 'I N. take thee N. to my [**wedded wife/wedded husband**]'). After the exchange of vows, the minister declares 'I pronounce that they be **Man and Wife together**', and later prays 'Send thy blessing upon these thy servants, this **man and this woman**'.⁶⁶

182. The man/woman principle is scripturally and theologically grounded in the liturgy. The BCP wedding service interprets Genesis 1–2 as making the relationship between Adam and Eve normative for the institution of marriage:

- (a) The priest declares that marriage 'joins together this Man and this Woman in holy Matrimony; which is an honourable estate, instituted of God in the time of man's innocency'. The reference to 'innocency' is a reference to Adam and Eve's pre-fall condition.
- (b) The priest declares that God 'at the beginning did create our first parents, Adam and Eve, and did sanctify and join them together in marriage', and prays that God would similarly bless the couple being joined in marriage.

⁶⁶ Similarly, the *BCP* wedding service provides that, where there is no sermon 'declaring the duties of Man and Wife', the minister is required to read two sets of scriptures, which address the duties of husbands and wives respectively—Eph 5:25–32; Col 3:19; 1 Pet 3:7 addressed to the husband, and Eph 5:22–24; Col 3:18 and 1 Pet 3:1–6 addressed to the wife. These scriptural exhortations reflect differentiated and reciprocal gendered relationships.

- (c) The prayer for God's '**blessing** [on] these two persons, that they may both **be fruitful** in procreation of children' echoes Gen 1:28 ('And God **blessed** them, and God said unto them, **be fruitful**, and multiply').
183. Furthermore, the BCP wedding service also applies Genesis 1–2 in light of Jesus' words in Matthew 19, seen in the priest's declaration that God 'didst appoint, that out of man (created after thine own image and similitude) woman should take her beginning; and, knitting them together, didst teach that it should never be lawful to put asunder those whom thou by Matrimony hadst made one.' This statement reflects Jesus' interpretation of Genesis 1–2 as recorded in Matt 19:4–6.
184. Because BCP grounds the man/woman nature of marriage in theology and scripture, this is a *principle*—and not merely a practice—of *The Form of Solemnization of Matrimony*. All jurisdictions which have changed their doctrine of marriage to allow same-sex partners have had to pass a Canon to do so, recognising that this was a departure from the man/woman principle embedded in the BCP wedding service.

The purpose of marriage

185. BCP identifies a threefold purpose for marriage—'for the procreation of children', 'as a remedy against sin and to avoid fornication' and for 'mutual society, help, and comfort'.⁶⁷
186. This is further explained in Homily 18, 'Of the State of Matrimony', which states that '[Marriage] is instituted of God, to the intent that man and woman should live lawfully in a perpetual friendly fellowship, to bring forth fruit, and to avoid fornication'.
187. This threefold purpose of marriage is also scripturally and theologically grounded

⁶⁷ We should not read too much into the order of the three purposes, given that Homily 18 uses a different order.

- (a) Marriage for the purpose of procreation derives, as already noted, from Gen 1:28 ('And God blessed them, and God said unto them, be fruitful, and multiply').
- (b) Marriage for the purpose of 'a remedy against sin, and to avoid fornication; that such persons as have not the gift of continency might marry, and keep themselves undefiled members of Christ's body' derives from 1 Cor 7, especially 7:2 ('to avoid fornication'), 7:5–7 ('the gift of continency') and—implicitly—7:9 ('keep themselves undefiled').
- (c) Marriage for the purpose of 'mutual society, help, and comfort' derives from Gen 2:18 ('It is not good that the man should be alone; I will make him an help meet for him [KJV].')

188. The procreative purpose of marriage does not mean that a marriage is **only valid** if it is procreative. Rather, according to the BCP wedding service, the **only valid** context for the procreation of children is the context of a marriage between a man and woman. There are many examples in the Scriptures of couples unable to produce offspring, and there is no suggestion that their marriages were not valid. Nonetheless, the various annulling impediments related to impotence and non-consummation necessarily imply that marriage requires one man and one woman. To posit that the principles of the BCP permit same-sex matrimony makes an absurdity of the rubric which states: "... if any man do allege and declare any impediment, why they may not be coupled together in Matrimony, by God's law, or the laws of this Realm ... then the solemnization must be deferred, until such time as the truth be tried." Marriage is the God-instituted form of relationship which is directed towards the threefold purpose of marriage, even if all three aspects are not able to be manifest in every marriage.

The marriage 'covenant'—a voluntary, lifelong and exclusive union

189. The BCP wedding service describes marriage as a 'vow and covenant betwixt them made'. In this covenant, husband and wife each commit to love each other in a lifelong

and exclusive union—'forsaking all other, keep thee only unto [her/him], so long as ye both shall live'. The lifelong nature of this promise is also highlighted in the vows, which are 'until death do us part'. The voluntary nature of these consents and vows is underscored in the marriage declaration—'Forasmuch as N. and N. have consented together in holy wedlock...'

190. The exclusive monogamous nature of the marriage union reflects Jesus' teaching about adultery in Matthew 19. The lifelong nature of marriage reflects Paul's teaching in 1 Cor 7:39. Therefore, mutual promises of lifelong faithfulness are a *principle* of BCP with respect to marriage.

Theologically grounded in creation, and a sign of the union between Christ and the Church

191. As noted above, the BCP service describes 'holy Matrimony' as being 'instituted of God' between Adam and Eve in the Garden of Eden. That is, the BCP wedding service understands marriage to be not merely a human or social institution, but a pattern of human relationships that was and is 'God's ordinance'. Moreover, the fact that marriage is said to be 'from the beginning', rather than commencing with the Mosaic Law, signals that marriage is God's pattern for all humanity and not merely for his covenant people.

192. Human marriage is also symbolic of the relationship between Christ and the Church.

holy Matrimony ... is an honourable estate, instituted of God in the time of man's innocency, signifying unto us the mystical union that is betwixt Christ and his Church.⁶⁸

⁶⁸ A similar idea is reflected in this prayer in the BCP marriage service:

O God, who by thy mighty power hast made all things of nothing; who also (after other things set in order) didst appoint, that out of man (created after thine own image and similitude) woman should take her beginning; and, knitting them together, didst teach that it should never be lawful to put asunder those whom thou by Matrimony hadst made one: O God, who hast consecrated the state of Matrimony to such an excellent mystery, that in it is signified and represented the spiritual marriage and unity betwixt Christ and his Church...

Marriage is the only relationship in which couples are 'joined together by God'

193. The BCP marriage service explicitly rejects the validity of other forms of 'coupling':

so many as are coupled together otherwise than God's Word doth allow are not joined together by God; neither is their Matrimony lawful

194. It is important to note that BCP rejects the validity of those 'coupled together' *contrary to God's word*, not *contrary to Anglican forms*. It is not making the claim that only Anglican marriages are valid. Any marriage which conforms to the principles outlined above—a voluntary, lifelong and exclusive union between a man and a woman reflecting God's purposes of marriage—is a marriage which is 'joined together by God'. This will include (for example) Jewish, Muslim and Buddhist weddings, and will also include civil marriages. This is the rationale for the liturgy for blessing a civil marriage, which has been released by the Liturgical Commission for trial use, as authorised locally by a Diocesan Bishop under s.4 of the Constitution.⁶⁹

'Pronouncing' and 'blessing' in God's name

195. The particular role of the minister in a BCP marriage (beyond that of officiant and witness) is to pronounce and bless in God's name. After the exchange of vows, the minister declares:

I pronounce that they be man and wife together, in the Name of the Father, and of the Son, and of the Holy Ghost.

196. This is followed by the following prayer:

Send thy blessing upon these thy servants, this man and this woman, whom we bless in thy Name'

⁶⁹ The service is available at https://www.anglican.org.au/data/Blessing_of_a_Civil_Marriage.pdf. General Synod resolution 114/10, 'welcomes the resources issued by the Liturgy Commission in 2007–2010, and commends them to the Anglican Church of Australia for use and response'.

197. The pronouncement is a declaration that this couple has been validly joined together by God, and the blessing declares that this relationship is one which God blesses.

Implications of the BCP doctrine of marriage for same-sex unions

198. Based on the analysis above, the doctrine of marriage of the BCP is that marriage is the voluntary union of one man and one woman arising from mutual promises of lifelong faithfulness. According to BCP, God instituted marriage for a threefold purpose. BCP understands marriage to be a covenant between a husband and a wife, voluntarily entered into by the public exchange of vows. *BCP* views marriage as 'God's ordinance' for all humanity, as the pattern of relationship established by God from the beginning, and normative for all human 'coupling' relationships that are valid in his sight.
199. The man/woman nature of marriage is a principle—and not merely a practice—of the doctrine of marriage in BCP. Marriage is understood in BCP to be the continuing expression of the form of relationship established by God between Adam and Eve (cf. Gen 1:27, 2:18; 2:23–25), and as affirmed by Jesus in Matthew 19. BCP understands complementary sexes to be of the essence of marriage. By virtue of section 4 of the Constitution, this doctrine of marriage arising from the BCP is the doctrine of marriage of the Anglican Church of Australia. Because the man/woman principle is fundamental to marriage in BCP, a new form of service for 'same-sex marriage' would 'contravene [a] principle of doctrine' of the formularies.
200. The argument that BCP only contains a doctrine of heterosexual marriage and therefore does not prohibit homosexual marriage is based on the false assertion that homosexual relationships were unknown in Tudor England and therefore could not have been prohibited by BCP. This is historically incorrect. The fact that buggery and later sodomy were capital offences since the *Buggery Act* of 1533 demonstrates the homosexual coupling was known and rejected throughout this period (and indeed throughout human history). That the headmaster of Eton, Nicholas Udall, was accused

of buggery and hauled before the Privy Council in 1541 shows the absurdity of positing that the principles of the BCP permit homosexual marriages. Moreover the 1682 case of two women (Arabella Hunt & Amy Poulter) demonstrates that a same-sex marriage was invalid under BCP. Poulter (purporting to be a man, James Howard) married Arabella Hunt according to BCP. The court found that the marriage was void, on the basis that two women cannot marry.⁷⁰ Thus the historical evidence is that the BCP was understood not merely to regulate heterosexual marriage but to “cover the field” of all forms of human coupling. Moreover, it was understood to preclude the possibility of a same-sex union being recognised as a marriage.

QUESTION (d): Is this a principle, which in 1962 was a principle of the Church of England embodied in the BCP, the Ordinal or the 39 Articles and which has therefore been retained by this church? (s.4) If yes, has this principle been altered by any exercise by the General Synod of its plenary authority as described in section 4 of the Constitution?

201. Previous opinions of the Appellate Tribunal have drawn a distinction between ‘principles of doctrine or worship’ and other principles arising from the formularies. For example, in relation to the ordination of women deacons, the Appellate Tribunal said that the principle that only men could be ordained as deacons was a principle reflected in the ordinal but that this was not a principle of doctrine or worship.⁷¹ As such, this principle was retained by the church at the inception of the Anglican Church of Australia in 1962, but the principle was capable of being changed by an appropriate canon of the General Synod.

202. If the Appellate Tribunal is not able to decide that the doctrine that marriage is between a man and a woman is a ‘principle of doctrine or worship’ arising from the formularies it is nonetheless still a principle which has been retained by this church. It has always

⁷⁰ Mendelson, Sara H. (2004). "Hunt, Arabella (1662–1705)". Oxford Dictionary of National Biography (ed., Jan 2008 ed.). Oxford University Press.

⁷¹ Report of the Appellate Tribunal dated 8 February 1980, page 4.

been the case that the Church of England has only allowed marriage between a man and a woman. This was the case in 1962. This historic doctrine of the Church of England continues to be reflected in Canon B30 (the current law of the Church of England) which states that:

‘The Church of England affirms, according to our Lord’s teaching, that marriage is in its nature a union permanent and lifelong, for better for worse, till death them do part, of one man with one woman, to the exclusion of all others on either side, for the procreation and nurture of children, for the hallowing and right direction of the natural instincts and affections, and for the mutual society, help and comfort which the one ought to have of the other, both in prosperity and adversity.’⁷²

203. Resolution 1.10 of the Lambeth Conference in 1998 reflected the shared Anglican view that the historic doctrine of the church is the marriage is between a man and a woman. Those Anglican jurisdictions which have authorised the blessing or solemnisation of same-sex marriages have had to change the doctrine of the church in order to do so. This is strong evidence that heterosexual marriage is a principle of our Anglican formularies.
204. Given that man/woman marriage is a principle that was “retained” by the church, the final question to be resolved is whether this principle has been displaced by any canon of the General Synod. There has been no such canon. *A Canon Concerning Services 1992* under which the Diocese of Wangaratta has purported to make the regulation under the current examination in no way overturns the principle that has been retained that marriage is between a man and a woman.

⁷² We note in passing that Canon B30 explicitly links the doctrine of marriage to the ‘teaching of Christ’. This is the same as the answer to Question B above.

Blessing a same-sex marriage is contrary to the doctrine of marriage

205. The question now turns to what it means to bless a union other than between one man and one woman and whether a service bestowing such a blessing on the coupling is contrary to the doctrine of this Church.
206. As demonstrated in paragraph 15 of these submissions that the Form of Service in the Regulations is not merely a service for blessing the persons in the civil marriage and that the service is a blessing of the coupling of the persons who have been married. Blessing the marriage involves invoking God's imprimatur or approval upon the coupling.
207. Wangaratta has relied upon an essay from the Rev. Canon Professor Dorothy Lee in relation to the nature of blessings. The paper set out in **Annexure C** prepared by the Rev Dr David Höhne is a response to this argument. Dr Höhne concludes that it is not possible for an Anglican Church in Australia to uphold the theological nature of blessing and give consent to, affirm or in any other way condone, same-sex unions.
208. The Wangaratta submission seeks to make a distinction between a "Christian marriage" and "civil marriage", and argues with the Church's doctrine of Christian marriage is irrelevant to blessing a civil marriage. It is argued in WS6.2:
- In the alternative, to the extent that the Church's teaching on marriage is properly characterised as doctrine, it is necessarily teaching confined to what constitutes a Christian marriage and does not extend to the question of the Church extending a blessing to persons in relationships that are recognised by the civil law but which do not have the status of Christian marriage.
209. The point has already been made that the church's doctrine of marriage is not limited to "Christian marriages", but rather defines all those marriages which are valid in God's sight, whether or not conducted in a church. In the early centuries of the church, the couple first entered into a civil marriage, which was subsequently blessed by a priest at the church. According to the Prayer Book Dictionary, 1912, p.462

MARRIAGE SERVICE.-The essence of [Marriage] is the mutual consent of the contracting parties, whereby in the presence of witnesses they accept one another as husband and wife. But as this may be but a civil contract, Christian folk naturally seek the benediction of the Church, and the civil contract becomes Holy Matrimony or Christian [Marriage]. Thus, in primitive Church days, the definitely Christian element was the celebration of the Euch[arist] with a solemn benediction of the wedded pair.⁷³

210. That is, a civil marriage followed by a blessing was how a marriage was recognised by the church as a marriage. In later Church History, there was a divergence between Eastern Orthodox and the Western branches of the church as to whether the subsequent blessing was necessary for the validity of the marriage. This divergence is described in Clarke, *Liturgy and Worship*, 1950, p.461.

Duchesne sums up [the Western view] thus: "No ecclesiastical law obliged Christians to seek a blessing on their marriage. The benediction was a matter of custom or propriety, and although it subsequently became the rule, it was never a condition of validity. The marriage is independent of the rite." [Citing Duchesne, *Christian Worship*, p. 428.] The Eastern Orthodox view is different. "The blessing of the priest is essential for the consummation of the sacrament. ... It is true that there are instances of the acceptance by the Church of marriages not blessed by a priest, as valid, but this does not indicate that the Church normally gave such recognition. ... The Roman view, that the ministers of the sacrament are the two parties who are to be made man and wife, is both wrong and vicious." [Citing F. Gavin, *Greek Orthodox Thought*, p. 382.]

⁷³ The citation given for this Tertullian *Ad Uxor* 2 9 (which is in error - read 2 8 instead) – "And how shall we express the happiness of the marriage which is strengthened by the Church, confirmed by an offering, sealed by a blessing ..."

211. It continues to be the practice in many European countries that marriage is recognised and established (only) by the State, and as a result, couples first have a “civil marriage” before a registrar authorised by the State, followed by a “church wedding” which has no legal status, but in which their civil marriage is declared to be blessed by God and valid in his sight. The liturgy for the “Blessing of a Civil Marriage” referred to in paragraph 192 allows for this two-stage procedure to be followed in Australia.
212. The proposition advanced by the Wangaratta Submission – that a civil marriage which is blessed by the Church does not have the status of a Christian marriage – cannot be sustained in light of historical practice.
213. The Wangaratta Submission relies on a theology of blessing articulated in the Synod Address given by the Rev. Canon Professor Dorothy Lee. Lee argues -

We bless people in all the stages of their life: their children, their sick and disabled, their dying. We bless animals and also inanimate things, like houses, buildings, and sacred objects (crosses and Bibles and candles). We bless food before meals. We even bless ships. Blessing lies at the heart of our common life as Anglicans and we are to extend it, as the gospel summons us, beyond ourselves to others...

Since Australia legislated for full marriage equality in 2017, the avenue of blessing same-sex unions needs to be seriously considered... We are speaking here of faithful Christians who love Christ and who love their church, and who desire that the relationship that means most to them, in human terms, can receive God's blessing. It seems a small thing to ask. The question we need to ask this: why should we not grant it as part of our spiritual and pastoral care of them, so that they can be blessed and also be a blessing to others? If we can bless their children, their animals, and their homes, why can we not bless them?

214. The theology of blessing articulated in this Synod Address does not reflect the "principles" of blessing which arise from the BCP. There are three types of blessings (otherwise known as benedictions) in the BCP (including the Ordinal) - Blessing of things, Blessing of persons, and Blessing of a relationship. According to the article "Benediction, or Blessing" in *The Prayer Book Dictionary*, 1913,

The [Blessing] of things is a custom of great antiquity in the Christian Church. Basil (c. 370) says: " We bless the water of baptism and the oil of unction" (*On the Holy Ghost* 27:66 - a passage in which he is giving a list of Church customs so old in his days that they were believed to have been of apostolic origin)...

The only [blessing] of things to be found in the PB are the blessing of the bread and wine in the Pr. of Consecr. (sec COMMUNION, HOLY, §10) and that of the water in the BAPTISMAL OFFICES)...

Under the head of [Blessing] of Persons we must distinguish between the special benedictive services by which men are dedicated to some office or position... and ordinary Benedictions...

There are twelve [such] blessings in the PB: (1) Absol in HC, (2) first half of Absol in VS, (3) and (4) first half of the words of Administration of Elements in HC, (5) and (6) in the Marriage Service, (7) and (8) in the Offices of Ordering Priests and Consecrating Bishops immediately after questions addressed to ordinands, (9) and (10) at the end of VS, (11) first half of final Blessing in HC, (12) Second half of final blessing in HC, repeated (with slight variation) at the end of Confirmation Service...

Besides these formal [Benedictions] there are in the PB one or two quasi-Benedictions as at the end of MP and EP and of Communion Office. These differ from [Benedictions] proper in the use of the first person instead

of the second, owing to the speaker being likewise included among those who are to receive the blessing.

215. The Prayer Book Dictionary includes the two blessings in the marriage service in the general category of blessings of persons. However, this does not recognise that the blessings in the marriage service are of a different character to the other 10 blessings of persons. The blessings in the marriage service are a blessing on the relationship (that is, the coupling), rather than a blessing on individuals. The marriage service is the only instance in the BCP where a relationship is blessed. As argued in paragraphs 14-17, is precisely this type of blessing of a relationship which is replicated in the Wangaratta Regulation.
216. The argument in the Synod Address above conflates the three different types of blessing into one, thereby blurring the issue at hand. Whether or not we blessing children, animals or homes does not provide any answer to the question as to whether it is appropriate to bless a same-sex relationship and thereby recognise a same-sex marriage as valid.
217. The blessing of a marriage relationship is a key operative part of the marriage service. This is a principle of this Church's doctrine of marriage. The Wangaratta Regulation purports to authorise the blessing of same-sex relationships, which is contrary to the principles and doctrine of this church.

Conclusion

218. These submissions demonstrate that:
 - (a) The doctrine of marriage of the Anglican Church of Australia is 'a principle of doctrine' for the purposes of section 4 of the Constitution, being a teaching of this Church on a question of faith and founded on all 4 sources of doctrine in the Fundamental Declarations and Ruling Principles.

- (b) This doctrine is 'God's ordinance' for all humanity, as the pattern of relationship established by God from the beginning, and normative for all human 'coupling' relationships that are valid in his sight.
- (c) The Form of Service prescribed by the Regulations involves blessing the coupling of the persons who have been married under the *Marriage Act 1961 (Cth)*, including couplings that arise from civil marriages that are contrary to the doctrine of the Church (in particular civil marriages involving two persons of the same sex).
- (d) The Form of Service in the Regulations involves invoking God's approval and favour upon the coupling. This is contrary to the Church's doctrine of marriage.
- (e) The Regulations are therefore invalid as they are repugnant to the Constitution.

Dated: 15 December 2019

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Annexure A

Marriage has always been ...? A Short History of Christian Marriage⁷⁴

The Rev Dr Mark Earngey (Head of Church History, Moore Theological College)

The purpose of this paper is to provide a short account of the development of marriage within the Christian faith. It is sometimes argued that the presence of incidental changes to the practice of marriage throughout the history of the Christian church legitimises any kind of further change. It will be demonstrated that while aspects of Christian marriage have changed throughout history, the substance of the doctrine of marriage as a union between one man and one woman does not change. The reasons for the persistence of the core doctrine of marriage fundamentally relate to the Church's continual effort to remain faithful to Holy Scripture.

1. **Roman and Christian Marriage in "primitive times".** The Church did not institute marriage in "primitive times". Rather, the Christian Church recognised God's institution of marriage between man and woman from creation and implemented the marital commands of the Lord Jesus and the Apostle Paul. The result of this Christian marriage was a divergence from the norms of marriage in the Roman world (e.g., Paul's approach to conjugal rights of husband and wife in 1 Cor. 7:1-5). Those who were married and then converted to Christianity were not required to remarry, but were recognised as married members of Christ who committed themselves to the particular teaching of Scripture concerning Christian marriage. Those who were Christians and then married became married through the same processes as their Roman neighbours. The processes to become married in the Roman world largely revolved around the intention to live together as husband and wife, and consummation was not necessary for the commencement of marriage. Thus, we could say that the church in "primitive times" adopted the processes required to be married under Roman law but adapted their marriages to comply with the commands of the Christian Scriptures.

⁷⁴ Or, marriage from "primitive times" (excluding the doctrine of marriage in Scripture, the "formularies" of the Church of England, and the principles of the C of E inherited in 1962).

What would in time become the Service of Holy Matrimony began as prayers for a couple who had recently been married (i.e. prayers for God's blessing after the event).

2. **The development of Christian marriage from “primitive times”.** Classical Roman jurists, such as Ulpian (c. 170-223) and Modestinus (fl. 250), generally believed that marriage was the union between a man and a woman, for the purposes of procreation and companionship for the duration of life.⁷⁵ The regulations of the early Church found in the *Didache* (c. 100-150?), *The Apostolic Tradition of Hippolytus of Rome* (c. 215), and the *Didascalia Apostolorum* (c. 230), not only take a similar position on the general nature of marriage, but prohibit various activities such as adultery, paedophilia, fornication, pederasty, etc. Likewise, the canons of Elvira (c. 305-6), and to lesser extent the canons of Nicaea (325), present marriage as between a man and a woman, and outline a raft of sanctions for sexual activity outside of this relational setting (especially adultery in the case of Elvira). The theologians of the early Church held similar positions. Justin Martyr (c. 100-165) argued against adultery and fornication, and commented on the procreative purposes of marriage, as did Clement of Alexandria (c. 150-215), and the great African theologian Tertullian (c. 155-220). St. John Chrysostom (c. 345-407) articulated a *natural* perspective on marriage as a remedy against fornication, a *spiritual* perspective on marriage as a vehicle for sanctification, a *contractual* perspective on marriage which raised it beyond material concerns, and a *social* perspective on marriage which embraced its benefits to the wider family and state.⁷⁶ Thus, while the early Christian approach to marriage reflected Roman marriage law there was significant development which accompanied the rise of Christendom. Though on occasion the early Christian approach to marriage rejected some aspects of Roman marriage law (e.g., that there could not be any marriage between slave and freemen), the early Church grounded their doctrine upon the Holy

⁷⁵ Philip Lyndon Reynolds, *Marriage in the Western Church: The Christianization of Marriage During the Patristic & Early Medieval Periods* (Leiden: Brill, 1994), 7-43.

⁷⁶ John Witte Jr., *From Sacrament to Contract: Marriage, Religion, and Law in the Western Tradition* (Westminster John Knox: Louisville Kentucky, 1997), 19-20.

Scriptures, and as Christianity expanded so too did the Christianisation of the social structure of marriage.

3. **The contribution of St. Augustine to Christian marriage.** It is difficult to overstate the importance of the contribution of St. Augustine of Hippo (354-430) for the development of the Christian doctrine of marriage. Augustine, who was previously committed to Manichean asceticism, wrote in the context of ascetic debates over the relative merit of virginity as compared to marriage. The former monk Jovinian (d. 405) argued that virginity and marriage were equal in status, and the theologian and ascetic defender Jerome (c. 347-420) countered that virginity was better than the married state. Thus, Augustine's writings on marriage, and especially his *De bono coniugali* and *De sancta virginitate*, attempt a middle way between Jovinian and the asceticism of Jerome and the Manichees. Augustine described the goodness of marriage as consisting in the benefits of offspring (*proles*), fidelity (*fides*), and its sacramental quality (*connubi sacramentum*). We must beware of anachronistically reading modern sacramental meaning back into Augustine's usage here. Augustine did not perceive marriage to be a sacrament in the same sense as Baptism or Holy Communion. Rather, Augustine described marriage as a sacrament due to his understanding of its indissolubility and its representation of the union between Christ and the Church (cf., 'sacramentum' in the Vulgate's rendering of Eph. 5:32). Therefore, the sacramental description of marriage in Augustine's theology reflects his understanding of the permanent quality of marriage between husband and wife. The significance of Augustine's teaching on marriage lies not only in his appreciation of the goodness of marriage, but in the terminology of 'sacrament' which was modified in the medieval doctrine of marriage.
4. **The codification of Christian marriage in medieval times.** From Augustine's time onwards, leaders of the church introduced ecclesiastical marriage law. Shortly thereafter, two general realms of legal jurisdiction obtained in the Church: judges

handled secular matters through civil law, and bishops handled spiritual matters through ecclesiastical law.⁷⁷ Nevertheless, there was no formalised body of canon law until Gratian's *Decretum* in the twelfth century, which became part of the *Corpus iuris canonici*. During this period of the middle ages – the 'Papal Revolution of Pope Gregory VII' – the Church took over matrimonial cases. Simultaneously, scholastic theologians of the time helpfully produced finely detailed expositions of Christian marriage, such as Hugh of St. Victor's *On the Sacraments of the Christian Faith* (c. 1143), Peter Lombard's *Book of Sentences* (1150), and Thomas Aquinas' *Summa Theologica* (c. 1265-1273). These contributions clarified the meaning of betrothal and marriage. They provided careful analysis of matters such as the role of consent and consummation for the commencement of marriage, and a pastorally driven discussion of annulling impediments to marriage, all of which greatly enabled the application of canon law to everyday life. Additionally significant, was the transformation of Augustine's "sacramental" approach to marriage. Witte Jr., writes:

Augustine called marriage a sacrament in order to demonstrate its symbolic stability. Thirteenth-century writers called marriage a sacrament to demonstrate its spiritual efficacy. Augustine said that marriage as a symbol of Christ's bond to the church *should* not be dissolved. Thirteenth-century writers said that marriage as a permanent channel of sacramental grace *could* not be dissolved. Augustine simply scattered throughout his writings reflections on the natural, contractual, and spiritual dimensions of the marriage without fully integrating them. Thirteenth-century writers wove these three dimensions of marriage into an integrated sacramental framework.⁷⁸

5. **The parallel development of Christian prohibitions against homosexual practices.** The development of Christian marriage loosely paralleled the development

⁷⁷ Reynolds, *Marriage in the Western Church*, 147.

⁷⁸ Witte Jr., *From Sacrament to Contract*, 29-30. Italics retained.

of the prohibition of homosexual sexual practices. While Roman law viewed homosexual intercourse as a criminal act (*stuprum*) and some in the Roman world mocked it as a “Greek disease”, the practice was tolerated in several instances (e.g., with non-citizens, and also between older men and younger boys).⁷⁹ However, the early Christian Church diverged from these principles and condemned all forms of homosexual practice on the basis of Scripture (e.g., 1 Cor. 6:9-11) and because it went against nature (as described in Rom. 1:24-32). Not only the Apostle Paul, but also the early Church Fathers, such as Tertullian and Clement, opposed homosexual practices as unnatural.⁸⁰ The rise of Christendom expanded the influence of Christian morality, and around the time of Justinian I (c. 482-565) homosexual practice was widely prohibited and severely punished.⁸¹ By the medieval period the prohibition of homosexual practice was carefully codified. Scholastic theologians such as Anselm of Laon, Peter Lombard, and Thomas Aquinas, all disapprovingly discussed homosexuality, and Gratian’s *Decretum* addressed the vice of sodomy with reference to four passages (i.e., Ambrose’s *Liber de patriarchis*, Augustine’s *Confessions*, pseudo-Augustinian *Contra Jovinian*, and second century jurist Paulus).⁸²

6. **Marriage in the European Reformations.** At the time of the Reformation the Roman Catholic Church considered marriage one of the seven sacraments. Due to its sacramental status, marriage was regulated through church courts rather than civil courts. Martin Luther (1483-1546) repudiated the sacramental status of marriage in his *Babylonian Captivity of the Church* (1520). In this treatise Luther also railed against certain annulling impediments set forth in canon law which he considered without basis in Scripture. By the publication of *The Estate of Marriage* (1522), Luther’s position had evolved, and not only did he provide sharper analysis of the canonical impediments to

⁷⁹ William Loader, *Making Sense of Sex: Attitudes towards Sexuality in Early Jewish and Christian Literature* (Grand Rapids, MI: Eerdmans, 2013), 136.

⁸⁰ Bernadette J. Brooten, *Love Between Women: Early Christian Responses to Female Homoeroticism* (Chicago: University of Chicago Press, 1996), 322, 355.

⁸¹ Eva Cantarella, *Bisexuality in the Ancient World* (New Haven: Yale University Press, 2002), 208-10.

⁸² Michael Goodrich, “Sodomy in Ecclesiastical Law”, *Journal of Homosexuality* 4/1 (1976): 432.

marriage, but he specified various grounds for divorce which he believed to be based upon Scripture. Philip Melanchthon (1497-1560), Johannes Bugenhagen (1485-1558), and the various jurists within the University of Wittenberg held reasonably similar views to Luther, and their teaching on marriage filtered down into the civil courts dispersed throughout the northern Germanic and Scandinavian regions. In their implementation of marriage law, virtually none of these civil courts adopted a Scripture only approach, but rather held to the supremacy of Scripture while implementing Scripturally compatible aspects of marriage and divorce law from the received body of civil and canon law. Similarly to Luther, the reformers of Zürich rejected the sacramental status of marriage and understood it to be a divine institution involving a social contract. Huldrych Zwingli (1484-1531) wrote the *Marriage Ordinance* which was promulgated by the city magistrates in 1525. This document outlined the constitution and legislative principles of the matrimonial council for Zürich. The traditional impediments to marriage were discussed, with similar Scriptural chastening as Luther applied. John Calvin (1509-1564), just as with Swiss reformers Zwingli and Heinrich Bullinger (1504-1575), viewed marriage as more than a social contract. It was a divinely instituted covenant between man and woman. However, in Calvin's Geneva, a far more conservative approach was taken to marriage law than in Zürich. In 1545, Calvin and four members from the Small Council of the city drew up the *Marriage Ordinance* which regulated marriage formation and dissolution. The consistory court could provide annulments where a small range of impediments for marriage were proven, and it could provide divorces where properly contracted marriages could be dissolved. The conservative Genevan approach to marriage found its way into Scotland via John Knox, and it also influenced the Dutch civil authorities and the ideas of prominent English Puritans.

7. **Marriage in Reformation England.**⁸³ In contrast to the reformations on the European continent, reformation England continued to regulate marriage law within the framework of the ecclesiastical rather than civil courts. Thus, King Henry attempted to revise the traditional canon law with his own native canon law in 1535 (largely a scissors and paste job from the *Corpus iuris canonici*). The work of the committee which drew up the Henrician canons was interrupted for unknown reasons, and the project went little further. However, during the reign of Edward VI, the revision of canon law received another lease of life through an act of parliament in 1549. On 6 October 1551, the Privy Council commissioned thirty-two men to attend to the reformation of canon law. However, when the newly reformed canon law was finally presented to parliament in April the following year, the work of the English reformers came to nothing, for the *Reformatio Legum Ecclesiasticarum* was vetoed by Lord President Northumberland himself. Notwithstanding its eventual failure within the Church of England, the *Reformatio* provides a unique insight into the collective thought of senior English reformers concerning marriage and divorce. Just as with the marriage courts on the continent, the *Reformatio* plundered the traditional body of canon law according to its compatibility with Scripture. Marriage was defined in the following way:

Matrimony is a legal contract, which by the command of God creates and effects a mutual and perpetual union of a man with a woman, in which each of them surrenders power over his or her body to the other, in order to beget children, to avoid prostitution and to govern life by serving one another. Nor is it our will for matrimony any longer to take place by promises or contracts, however many words they may have or whatever accompaniments there may

⁸³ Because they have been treated elsewhere in this submission, the traditional "formularies" of the Church of England BCP, 39 Articles, and the Ordinal) have been largely excluded from the present discussion.

be, unless it is celebrated according to the form which we have appended here.⁸⁴

8. **Rejection of Martin Bucer's doctrine of marriage in Reformation England.** It is sometimes argued that the matrimonial canons in the *Reformatio* are indebted to the great Alsatian reformer, Martin Bucer (1491-1551). However, while Bucer was highly influential upon various theological matters from his position of Regius Professor of Divinity in Cambridge, this was not the case for the canons concerning marriage and divorce. He had died before the *Reformatio* was drafted, and his views set forth in *De Regno Christi* (1551) not only envisaged civil jurisdiction over matrimonial disputes but contained other views out of step with the *Reformatio*. Bucer held that marriage required cohabitation, deep love and affection, the leadership of the husband and helpfulness of a wife, and conjugal benevolence. If anyone, through stubbornness or inability, could or would not perform these duties, then there was no true marriage and they ought not to be counted man and wife. To Bucer's mind, divorce could even be granted by sheer mutual consent of marriage partners. His liberal views on marriage and divorce were well known, with one evangelical writing to Heinrich Bullinger that "Bucer is more than licentious on the subject of marriage. I heard him once disputing at table upon this question, when he asserted that a divorce should be allowed for any reason, however trifling".⁸⁵ Given the controversial nature of Bucer's views, it is not surprising that Archbishop Thomas Cranmer rejected his suggestion to revise the *Book of Common Prayer* by raising mutual help to the foremost purpose of marriage (before both procreation and sex) in the wedding service.
9. **The history of marriage in English canon law.** By the end of King Edward VI's reign the *Reformatio* was a dead letter. It had not passed through Parliament nor

⁸⁴ Gerald Bray, *Tudor Church Reform: The Henrician Canons of 1535 and the Reformatio Legum Ecclesiasticarum* (Woodbridge, Suffolk: Boydell Press, 2000), 247.

⁸⁵ John Burcher to Heinrich Bullinger, 8 June 1550, in Hastings Robinson (ed.), *Original Letters Relative to the English Reformation*, 2 vols. (Cambridge: Cambridge University Press, 1846), 2:665-666.

Convocation. It was floated again during the reign of Queen Elizabeth but debates over ecclesiastical polity took precedence over ecclesiastical law. Indeed, only in 1604 would the Church of England produce its own body of canon law. The irony of this achievement of a reformation goal was that the 1604 canons set forth parameters for marriage and divorce more restrictive than the pre-reformation situation: impediments were small in number, separation was permitted, but divorce itself was not. The sacramental status of marriage had been rejected but the functional indissolubility of marriage had not. The first move away from the Church of England canon law came with the Clandestine Marriage Act 1753, and civil marriages were permitted with the Marriage Act 1836. The jurisdiction of the ecclesiastical courts only ceased with the Matrimonial Causes Act 1857 which introduced the possibility of divorce, which possibilities were expanded with the Divorce Reform Act 1969. Therefore, right up until the end of the twentieth century, writes Diarmaid MacCulloch, the Church of England “kept the strictest laws on marriage in all western Christendom, scarcely mitigated by the numerous ingenious reasons for annulment with which the Roman Catholic Church lawyers relieve Catholic canon law on marriage.”⁸⁶

10. **Conclusion: the persistence of Christian marriage from “primitive times”.** Aspects of Christian marriage have been changing since “primitive times.” The Christian adoption and adaptation of Roman marriage law and the expanding body of canon laws concerning marriage demonstrate this principle. However, the core doctrine of marriage – between one man and one woman for life – has remained remarkably and entirely consistent throughout the last two millennia. Similarly, the Christian condemnation of homosexual practice has likewise been substantially stable throughout the same period. The affirmation of marriage and the prohibition against homosexual sexual relations are the main reasons why there has been no period in the first two thousand years of Christianity in which the Christian Church has affirmed

⁸⁶ Diarmaid MacCulloch, *Reformation: Europe's House Divided* (London: Penguin Books, 2004), 660-661.

and blessed marriages consisting of two persons of the same sex. This, in turn, attests to the strength and clarity of the biblical witness concerning Christian marriage between husband and wife, and the fidelity of the church to the commands of Christ and the teaching of the Apostle Paul in the Bible.

Annexure B

Philo, *On the Special Laws* – Book 3

<p>(spec 3.37) Moreover, another evil, much greater than that which we have already mentioned, has made its way among and been let loose upon cities, namely, the love of boys, which formerly was accounted a great infamy even to be spoken of, but which sin is a subject of boasting not only to those who practise it, but even to those who suffer it, and who, being accustomed to bearing the affliction of being treated like women, waste away as to both their souls and bodies, not bearing about them a single spark of a manly character to be kindled into a flame, but having even the hair of their heads conspicuously curled and adorned, and having their faces smeared with vermilion, and paint, and things of that kind, and having their eyes pencilled beneath, and having their skins anointed with fragrant perfumes (for in such persons as these a sweet smell is a most seductive quality), and being well appointed in everything that tends to beauty or elegance, are not ashamed to devote their constant study and endeavours to the task of</p>	<p>Ἐπεισκεκώμακε δὲ ταῖς πόλεσιν ἕτερον πολὺ τοῦ λεχθέντος μείζον κακόν, τὸ παιδεραστεῖν, ὃ πρότερον μὲν καὶ λεχθῆναι μέγα ὄνειδος ἦν, νυνὶ δ' ἐστὶν αὐχμημα οὐ τοῖς δρωῶσι μόνον, ἀλλὰ καὶ τοῖς πάσχουσιν, οἱ νόσον θήλειαν νοσεῖν ἐπιζόμενοι τὰς τε ψυχὰς καὶ τὰ σώματα διαρρέουσι μηδὲν ἐμπύρευμα τῆς ἄρρενος γενεᾶς ἐώντες ὑποτύφεισθαι, περιφανῶς οὕτως τὰς τῆς κεφαλῆς τρίχας ἀναπλεκόμενοι καὶ διακοσμούμενοι καὶ ψιμμυθίῳ καὶ φύκεσι καὶ τοῖς ὁμοιοτρόποις τὰς ὄψεις τριβόμενοι καὶ ὑπογραφόμενοι καὶ εὐώδεσι μύροις λίπα χριόμενοι—προσαγωγὸν γὰρ μάλιστα ἐν τοῖς τοιοῦτοις τὸ εὐώδες ἐν ἅπασιν τοῖς εἰς εὐκοσμίαν ἡσκημένοις—, καὶ τὴν ἄρρενα φύσιν ἐπιτηδεύσει τεχνάζοντες</p>
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<p>changing their manly character into an effeminate one.</p>	
<p>(38) And it is natural for those who obey the law to consider such persons worthy of death, since the law commands that the man-woman who adulterates the precious coinage of his nature shall die without redemption, not allowing him to live a single day, or even a single hour, as he is a disgrace to himself, and to his family, and to his country, and to the whole race of mankind.</p>	<p>εἰς θήλειαν μεταβάλλειν οὐκ ἐρυθριῶσι. καθ' ὧν φονᾶν ἄξιον νόμῳ πειθαρχοῦντας, ὃς κελεύει τὸν ἀνδρόγυνον τὸ φύσεως νόμισμα παρακόπτοντα νηπιοῖ τεθνάσαι, μηδεμίαν ἡμέραν ἀλλὰ μηδ' ὥραν ἐώμενον ζῆν, ὄνειδος αὐτοῦ καὶ οἰκίας καὶ πατρίδος ὄντα καὶ τοῦ σύμπαντος ἀνθρώπων [39] πων γένους.</p>
<p>(39) And let the man who is devoted to the love of boys submit to the same punishment, since he pursues that pleasure which is contrary to nature, and since, as far as depends upon him, he would make the cities desolate, and void, and empty of all inhabitants, wasting his power of propagating his species, and moreover, being a guide and teacher of those greatest of all evils, unmanliness and effeminate lust, stripping young men of the flower of their beauty, and wasting their prime of life in effeminacy, which he ought rather on the other hand to train to vigour and acts of courage; and last of all, because, like a</p>	<p>ὁ δὲ παιδεραστής ἴστω τὴν αὐτὴν δίκην ὑπομένων, ἐπειδὴ τὴν παρὰ φύσιν ἡδονὴν διώκει καὶ τὰς πόλεις τό γε ἐπ' αὐτὸν ἦκον μέρος ἐρήμους καὶ κενὰς ἀποδείκνυσιν οἰκητόρων διαφθείρων τὰς γονὰς καὶ προσέτι τῶν μεγίστων κακῶν, ἀνανδρίας καὶ μαλακίας, ὑφηγητῆς καὶ διδάσκαλος ἀξιοῖ γενέσθαι τοὺς νέους ὠραΐζων καὶ τὸ τῆς ἀκμῆς ἄνθος ἐκθελύνων, ὃ πρὸς ἀλκὴν καὶ ῥώμην ἀλείφειν ἀρμότιον ἦν, καὶ τελευταῖον ὅτι κακοῦ τρόπον γεωργοῦ τὰς μὲν βαθυγείους καὶ εὐκάρπους ἀρούρας χερσεύειν ἔᾶ μηχανώμενος ἐπ' αὐταῖς ἀγόνιαν, ἐξ ὧν δ' οὐδὲν βλάστημα προσδοκᾶται τὸ παράπαν,</p>

<p>worthless husbandman, he allows fertile and productive lands to lie fallow, contriving that they shall continue barren, and labours night and day at cultivating that soil from which he never expects any produce at all.</p>	<p>εἰς ταῦτα πονεῖται μεθ' ἡμέραν τε [40] καὶ νύκτωρ.</p>
<p>(40) And I imagine that the cause of this is that among many nations there are actually rewards given for intemperance and effeminacy. At all events one may see men-women continually strutting through the market place at midday, and leading the processions in festivals; and, impious men as they are, having received by lot the charge of the temple, and beginning the sacred and initiating rites, and concerned even in the holy mysteries of Ceres.</p>	<p>αἴτιον δ' οἶμαι τὸ παρὰ πολλοῖς τῶν δήμων ἀκρασίας καὶ μαλακίας ἄθλα κείσθαι· τοὺς γοῦν ἀνδρογύνους ἔστιν ἰδεῖν διὰ πληθουούσης ἀγορᾶς ἀεὶ σοβοῦντας κἀν ταῖς ἑορταῖς προπομπεύοντας καὶ τὰ ἱερὰ τοὺς ἀνιέρους διειληχότας καὶ μυστηρίων καὶ τελετῶν κατάρχοντας</p>
<p>(41) And some of these persons have even carried their admiration of these delicate pleasures of youth so far that they have desired wholly to change their condition for that of women, and have castrated themselves and have clothed themselves in purple robes, like those who, having been the cause of great blessings to their native land, walk about attended by body-guards, pushing down every one whom they meet.</p>	<p>(41) καὶ <τὰ> Δήμητρος ὀργιάζοντας. ὅσοι δ' αὐτῶν τὴν καλὴν νεανειάν προσεπιτείνοντες εἰς ἅπαν ὠρέχθησαν μεταβολῆς τῆς εἰς γυναῖκας καὶ τὰ γεννητικὰ προσσπέκοψαν, ἀλουργίδας ἀμπεχόμενοι καθάπερ οἱ μεγάλων ἀγαθῶν αἴτιοι ταῖς πατρίσι προέρχονται δορυφορούμενοι, τοὺς ὑπαντῶντας (42) ἐπιστρέφοντες</p>

Annexure C

A Theological Account of Blessing

The Rev Dr David Höhne (Academic Dean, Moore Theological College)

1. At the recent Synod of the Wangarratta (Aug 2019) Dr Dorothy Lee mounted a case for the possibility of Australian Anglican churches blessing same-sex unions in keeping with the general practice of blessing civil unions and the local practices of blessing various aspects of daily life. This paper addresses the biblical and theological premises of Dr Lee's address and argues:
 - (a) The Scriptural account of blessing by God is synonymous with the revelation of God's will for the world through Jesus the Christ.
 - (b) The Scriptural account of blessing by God includes the reality of God's curse (or wrath) being prosecuted against creaturely life that does not conform to his will in Christ.
 - (c) In the interim between promise and fulfilment, the Biblical writers acknowledge a tension between the apparent flourishing of those under curse and the promise of blessing for those who uphold God's covenant.
 - (d) It is not possible for an Anglican Church in Australia to uphold the theological nature of blessing and give consent to, affirm or in any other way condone, same-sex unions.
2. *Blessing and the Will of God* – Lee points to the Genesis account claiming that, 'To be blessed by God means to receive God's favour in protection of us and provision for us.' In the context of Genesis, this definition is insufficiently exact. In the creation account, to be blessed by God is to be declared fit for purpose and enabled to fulfil that purpose according to divine will⁸⁷. So, as we examine the Creation account in Gen. 1&2

⁸⁷ W. J. Dumbrell, *The Search for Order* (Grand Rapids, Michigan: Baker Books, 1994), 20-22.

the Lord blesses the living things (1:22), especially the man and woman (1:28), declaring them fit for the purpose of filling the earth. The man and the woman joined together are declared, by God, to be very good and God's will for them in the world is made plain. Later, when the man Noah and his family emerge from the Ark, God's will for humankind is revealed as they are blessed and recommissioned with the creation mandate of Gen.1:26-28 (Cf.Gen.9:1)

3. When God calls Abram, he receives promises of blessing and the covenant that is subsequently established by God with him is the inner meaning of those blessings. God reveals both his will for Abram and his will for 'the nations' when he promises to bless Abram and make him a blessing to all nations (Gen.12:1-4; 22:18). When this office of mediator is recognised by the King of Salem (Gen.14:19), the writer describes the act of recognition as a blessing even as Abraham's status in God's intentions is confirmed. Thus, the act of blessing is tightly bound to a revelation of God's will for a person or group.⁸⁸
4. As Lee acknowledges, 'The covenant made with the people of Israel on Mount Sinai brings with it the promise of blessing in response to obedience to the Law of Moses.' Yet, Israel is redeemed from slavery on the basis of the Abrahamic covenant (Ex.3:14-15) and, within the covenant relationship, is God's 'special possession' for mediating his will to and for the world as a 'holy nation' and a 'kingdom of priests' (Ex.19:5-6). As they participated in the cultic, moral and judicial elements of the covenant they were blessed by the designated mediators of God's will – Moses and Aaron (Lev.9:22-23) Fidelity on the part of the people to God's promises would result in blessings to every aspect of Israelite life as confirmation that their lives were in accordance with his will (Deut.28:3-6).

⁸⁸ See Rhys Bezzant, 'To What End? The Blessing of Same-Sex Marriage' in Doctrine Commission of General Synod Report, 2019.

5. When, by the power of the Spirit, the eternal Son becomes a creature in his own creation, he enters the line of David and assumes a place as an inheritor of the promises to Abraham (Mat.1:2-15). Without the explicit language of blessing he is publicly recognised as the 'beloved son' of God who perfectly conformed to his Father's will and hence 'with whom [the Father] is well pleased.' (Lk.3:22) Subsequently however, both those who see and believe this declaration are blessed (Mt.16:17; Mk.8:28) by God through him as are even those who do not see and yet believe (Jn.20:29), for this is God's will for people to be saved from their sins (Mat.1:21). Furthermore, the Christ pronounces blessings on any who see in him the purposes of God's coming kingdom and turn aside from the religious aspirations of the world – including the Pharisaic piety of the day (Mat.5:3-10). They are blessed as they acclaim and proclaim the will of God for humanity in the Christ.
6. *Blessing and Cursing in the will of God* – A significant aspect of blessing as a revelation or recognition of divine will in the Biblical narrative is its asymmetric complement, divine curse or wrath.⁸⁹ From the Genesis account of blessing, the rebellion of the man and the woman against God is examined, judged and prosecuted as actions that are not according to God's will for them. God acts in wrath towards sin, death and evil in creation generated entirely from his holy love for creation and this action is described in the subsequent narrative as curse. So, the man and the woman are restored by God to each other; humanity is restored to a right order with the creatures and humanity is restored to its relationship with the creation according to God's will. However, and because of their sin, they all experience this as divine curse (Gen.3:14-17).⁹⁰
7. When God chooses Noah to preserve his intentions for humanity in the face of near universal creaturely rebellion, the subsequent blessing he and his family receive must

⁸⁹ BDB and NIDOTTE note that certain forms of the Hebrew word to bless (brk) can mean curse. See 1Kgs.21:10, 13; Jb.1:5,11, 2:5, 2:9.

⁹⁰ Gordon J. Wenham, *Genesis 1-15, Word Biblical Commentary 1* (Waco, Tex: Word Bks, 1987), 86-91.

be viewed in the context of God's curse in the form of the flood (Gen.6).⁹¹ Later, and more explicitly, when God calls Abram in Gen.12 and promises the blessings of name, progeny and land, he announces Abram as an agent of *both* blessing and curse: 'I will bless those who bless you, and him who dishonors you I will curse, and in you all the families of the earth shall be blessed.' (Gen.12:3 ESV) The covenant that ensues between God and Abraham delineates human life before God as either blessed or cursed according to conformity with divine will as revealed through God's gracious choice to bless.

8. As Israel stands on the plains of Moab in anticipation of entering the promised land of blessing, they are reminded by Moses that infidelity towards the covenant will bring curse: 'See, I am setting before you today a blessing and a curse:' (Deut. 11:26). The life that is blessed by the Lord and therefore acclaimed as according with his will is one in contrast to the life that is cursed by God. To break any part of the Law was to break all of it (Deut.27:26). The tragic fate of the Israelite story is, of course, that subsequent generations of infidelity finally exhausted the Lord's patience, the curses of Deuteronomy 27 were fulfilled, and Israel was sent into exile. Faithfulness to God's Law brought blessing and life. Infidelity to God's will brought curse and death.
9. With the coming of the Christ in fulfilment of God's intentions to save, 'Christ redeemed us from the curse of the law by becoming a curse for us.' (Gal.3:13 ESV) The will of God revealed in the blessing of Abraham is fulfilled in the risen Jesus the Christ and comes through him in the Spirit (Gal.3:14). In fact, 'every spiritual blessing in the heavenly realm' is graciously made available to those in Christ (Eph.1:3), those sealed with the Spirit (Eph.1:13). In the New Covenant, the mindset of the Spirit brings life while the desires of the flesh bring death (Rom.8:13). In fact, our bodies are 'a Temple of the Holy Spirit,' such that we 'honour God with our bodies' (1Cor.6:17). Thus, those

⁹¹ John Goldingay, *Israel's Gospel*, vol. 1, *Old Testament Theology* (Downers Grove, Ill: IVP Academic, 2003), 177.

in Christ, and by the power of the Spirit, renounce their former embodied activities as under the curse or the wrath of God (1Cor.6:9-11, *Cf.* Rom.1:18-31).

10. *Flourishing and the Curse of God* – In the first instance, when God blesses a person, or a person recognises and declares another as blessed by God, it is a moment of revelation. A particular creaturely existence is declared to be in accordance with the will of God and his intentions for created life – especially human life. The alternative in the greater Scriptural narrative is the curse of God towards creaturely life that defies or is otherwise recalcitrant towards divine intention. In fact, the former is invariably revealed to be present in the context of, and in contrast to, the latter. Hence, the revelation that a certain individual or group is blessed also invariably requires divine intervention in the form of illumination. Otherwise the circumstances of flourishing may well be mistaken for creaturely life that accords with divine intention.
11. In Gen.4 the descendants of Cain are recorded as patriarchs of human culture and flourishing akin to the creation mandate (Gen.1:28), ‘building cities,’ (4:17) ‘the father of nomadic herdsman,’ (4:20) ‘the father of all who play lyre and flute,’ (4:21) ‘maker of all kinds of bronze and iron tools.’ (4:22) From a superficial perspective these individuals and their families appeared blessed until we recall God’s curse on Cain. (4:11) Conversely, though blessed by God with various promises of progeny and place, Abraham and Sarah and their descendants wander through the land enduring periods of barrenness, and therefore apparent curse, as they await the fulfilment of God’s covenantal intentions. (Gen.15:2, 25:21, 29:31)
12. As the story of Israel in the land progresses, the question of YHWH’s justice according to the Deuteronomic charter – blessings for life and cursing for death – becomes a point of contention for poet and prophet alike. The psalmist laments, ‘Behold, these are the wicked; always at ease, they increase in riches. All in vain have I kept my heart clean and washed my hands in innocence.’ (Ps.73:12&13; *Cf.* Job.21:7; Eccles.7:15, 8:14 ESV) The prophet Jeremiah remonstrates before the Lord, ‘Why does the way of

the wicked prosper? Why do all who are treacherous thrive?' (Jer.12:1 ESV) In the providence of God, those under curse are permitted to flourish even as their response to God's general grace towards creation serves to condemn their actions.⁹²

13. Lee calls repeatedly for 'a deeper understanding of biblical principles to lead us' and cites a previous bishop of Gippsland in affirmation of same-sex relationships, especially where such unions exhibit fruit that might otherwise be attributed to the Spirit of God. Against the broader Scriptural narrative and in accordance with the, seemingly, paradoxical nature of God's activities, it would be more accurate to say that such instances of flourishing do not automatically accord with divine intention for humanity. Instead we ought to heed the warning of Paul against a failure to acknowledge '... the riches of [God's) kindness, restraint, and patience,' a failure to recognize 'that God's kindness is intended to lead you to repentance.' (Rom.2:4)
14. *Blessing Same-Sex unions in Anglican Churches* – the Book of Common Prayer exhorts the gathered congregation to consider whether the proposed union between the man and the woman is in accordance with God's Word – according to God's will for human beings. It is only once the relationship has been deemed to be in accordance with God's will that any blessing over the couple can be pronounced. As has been shown, the biblical principle for blessing is that a person or persons are recognized to be living in accordance with God's intentions for human beings in the world. Same-sex relationships, though they may have the appearance of flourishing, cannot be considered to be unions in accordance with God's will for humanity. Therefore, it is not possible for Anglican Churches to recognize, consent to or otherwise 'bless' such unions.

⁹² See Calvin's observation in commentary on Genesis 4 (John Calvin, *Genesis, Biblical Commentaries* (Albany, OR: AGES Software, 1997).

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