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TO THE APPELLATE TRIBUNAL
ANGLICAN CHURCH OF AUSTRALIA

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

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

PROCEDURAL CONCERNS
HELEN AND BRIAN GITSHAM
Diocese of Adelaide

1. We note the Appellate Tribunal Canon 1981 Section 7B (1) (b)
A Canon to repeal the Appellate Tribunal Canon 1962 and to provide for the appointment of members to the Appellate Tribunal.
 - 1) This section applies if, before the Appellate Tribunal commences to dispose of an appeal, question or matter (to an extent greater than conducting directions hearings or other procedural steps) made or referred to the Appellate Tribunal, a member of the Appellate Tribunal –
 - b) is unavailable to participate in the hearing of a matter due to an apprehension of bias or a conflict of interest.

We understand that Bishop John Parkes is a member of the Appellate Tribunal and given that the Tribunal is dealing with the matter of the Diocese of Wangaratta, he has recused himself. However, we also note that Justice Clyde Croft, Chancellor of the Diocese of Wangaratta, is a member of the Tribunal and has not yet recused himself.

During his Presidential Address to Synod on 30 August 2019, Bishop Parkes said,
“The observant among you will have noticed that the Chancellor is not at my side, for the first time in 11 Synods. I have deliberately not consulted the Chancellor on any matter relating to the Service of Blessing for those married according to the Marriage Act 1961 which will come to the Synod in due course ... Justice Croft is a member of the Appellate Tribunal and it was clear to him and to me that this matter could come to the Tribunal ... Nevertheless so that the judge can not only be but can be seen to be at arm’s length from these matters and therefore able to sit in determination on any question which arises, we resolved that he should not receive any Synod papers and

not attend this session of Synod. It causes both me and my Chancellor great sorrow that this has to be the case. Justice Croft has served me and the Diocese with great skill and devotion ...”

In response, considering the committed relationship Justice Croft has had with the Diocese for a number of years, and undoubtedly, advice given to the Bishop by Justice Croft in his role as Chancellor of the Diocese, we consider it is important that the integrity of the Tribunal is maintained.

We would concur with Rev. David Ould who wrote on line at davidould.net on 31 August 2019, in an article entitled, “*Wangaratta Synod prepares to push Anglican Church of Australia to the brink*”;

“here at we think there is only one option for Justice Croft; he must recuse himself from the hearing. The matter is of such great import for the national church and he has (as Parkes himself puts it) ‘served me and the diocese with great skill and devotion’ for 11 years. It is not a matter of whether Croft can be impartial; we don’t know the man and can only assume he is of the utmost integrity. The Appellate Tribunal, however must be seen to be utterly without fear or favour on this most crucial of questions and we believe Justice Croft would understand that.”

2. Appellate Tribunal in the Constitution of the Anglican Church of Australia

Bishop Michael Stead has written in *Essays from the Doctrine Commission, 2019, concerning Marriage, same-sex marriage and the Anglican Church of Australia*, in one of his essays, “the doctrine of Marriage of the Anglican Church of Australia” pp. 33 in Note number 5:

“The Constitution makes the Appellate Tribunal the final arbiter of questions of faith ritual ceremonial or discipline ... [then follows the two questions we are required to answer in this Submission].

Question (a) addresses faith of this church and

(b) addresses ritual ceremonial or disciplines.

The faith of this church is determined by the Fundamental Declarations (1-3) and the Ruling Principles (4-6), and any canon must be consistent with both the Fundamental Declarations and the Ruling Principles. The church cannot pass a canon which is inconsistent with the Fundamental Declarations (see section 66.) It can, however, pass a canon to change the Ruling Principles (See section 67(1)(c).

We certainly acknowledge the pivotal role the Appellate Tribunal has in determining the questions of faith ritual ceremonial or discipline but we also note the Constitution states

#58 (1) Before determining any appeal or giving an opinion on any reference the Appellate Tribunal shall in any matter involving doctrine upon which the members are not unanimous upon the point of doctrine and may, if it thinks fit, in any other matter, obtain the opinion of the House of Bishops, and a board of assessors consisting of priests appointed by or under canon of General Synod.

and

#58 (2) In any case where the House of Bishops is consulted under this section, the House of Bishops shall aid the tribunal with such information in writing as it thinks proper, provided that if all members of the House of Bishop do not concur each of the members at the time in Australia may aid the tribunal with such information in writing as he thinks proper. For the purpose of this sub-section the House of Bishops shall not include the bishops who are members of the Appellate Tribunal.

From these sections it is clear that there is advice in the Constitution to consult with the House of Bishops if there is any dispute over points of doctrine and we would commend the Appellate Tribunal to consider this option.

The Submission from the Diocese of Wangaratta illustrates this point well under the heading, “*Scripture*”:

#64. “It can be readily acknowledged that there is a body of opinion that would consider the blessing of same sex marriages contrary to Holy Scripture, and therefore contrary to the faith of the Church as reflected in Section 2 of the Fundamental Declarations, because of the presence of certain Biblical verses which are interpreted by some scholars as prohibiting homosexual relationships. However given the extent of learned debate amongst biblical scholars and theologians regarding the proper meaning and weight to be attached to those few phrases, and having regard to the need for questions of faith to be capable of clear definition because they can form the basis for charges in diocesan and Special Tribunals, the Tribunal should be slow to reach a conclusion that those verses of themselves are sufficient to support a conclusion that the Fundamental Declarations prevent the creation of a service of blessing for persons who are married under the Marriage Act, including persons in a same sex civil marriage.

#65. As the Appellate Tribunal has had occasion to remark in cases relating to the ordination of women, it is not always possible to discern from scriptural texts a single unified and consistent meaning.

1) Ancient texts are far from unambiguous, are sometimes no less than obscure, and are the subject of such widely divergent interpretation and explanation by exponents of the arts of hermeneutics and scriptural exegesis that the quotation

back and forth of scriptural texts is of little assistance in the legal task that confronts the Tribunal.

In response we cite a recent article (see attachment) in *The Weekend Australian, The Inquirer*, November 23-24 2019 entitled “*Discrimination Bill goes beyond matters of Religion*”, written by Mark Fowler, has a by-line, “*It surely is not for judges to decide if people interpret their faith mistakenly;*”

Although the article refers to matters of religious discrimination, there are points made that are relevant to the issue at hand.

“...To gain the benefit of the bill’s protections, a person must convince a judge their conduct ‘may reasonably be regarded as being in accordance with the doctrines, tenets, beliefs or teachings of their religion’. In non-legalise a person will not be protected if a judge decides their sincerely-held convictions are not an accurate interpretation of their religion ... Canadian Supreme Court Justice Frank Lacobucci has said, ‘The State is in no position to be, or should be, nor should it become, the arbiter of religious dogma’ ...

US Chief Justice Warren Burger said, ‘It is not within the judicial function and judicial competence to inquire whether the petitioner or his fellow worker more correctly perceived the commands of their common faith. Courts are not arbiters of scriptural interpretation.’

The Australian Catholic Bishops Conference Submission on the Religious Discrimination Bill reflects this concern. ‘It should be a matter of Policy to ensure that courts do not determine the beliefs of a religious Community.’”

These comments refer to the Religious Discrimination Bill before the Australian Federal Government, but there are similarities to the work of the Appellate Tribunal. We acknowledge that the Tribunals come under the auspices of the Constitution of the Anglican Church of Australia and are therefore not considered to be secular however it is clear by the makeup of the Appellate Tribunal that, by its membership, its major consideration will be legal matters, not doctrinal.

The Tribunal is made up of seven members; three Bishops and four laymen, all of whom must be qualified lay members of a diocese AND is or has been a Justice of the High Court, Justice of the Supreme Court of a State or Territory, or has been a practising barrister or solicitor. It is clear that the weight of the work of the Tribunal will be on legal matters and legal opinion, not on determining doctrine. Therefore, it is most important that the Tribunal should refer matters of disputed doctrine and matters of faith to the House of Bishops.

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

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

**SUBMISSION BY HELEN AND BRIAN GITSHAM
Diocese of Adelaide**

INTRODUCTION

We are Brian and Helen Gitsham, lay members of the Anglican Diocese of Adelaide for more than 60 years and married for 52 years.

We write this Submission to the members of the Appellate Tribunal not as theologians, lawyers or academics, but as practising committed Christians for the past 60 years. As part of this Submission, we intend to point to a number of references that will support our opinions.

Our experience of the Anglican Church has been wide and comprehensive, from orthodox evangelical, to traditional and high church sacramental.

Converted by God's Grace to a saving faith in Jesus Christ when in our teens we were nurtured and taught well from the Scriptures and we grew to value the elemental foundations of the Anglican Church and the boundaries of belief and practice as set out in the Scriptures, the Creeds, the Prayer Book, the 39 Articles and Apostolic Teaching. All point to solid doctrine established from the days of the Apostolic Fathers.

Some churches we attended were not much more than moralistic in their teaching; others more evangelical and bible-based and others more sacramental. Prayer books would be in the pews, but not always Bibles. Yet most churches proclaimed Apostolic teaching and truth.

Not only did we learn and grow in our Christian walk but we also developed critical thinking skills; *"what are we doing and why are we doing it?"* And because of our increasing knowledge of Scripture we could also ask ourselves, *"what do I believe and why do I believe it?"* Our Rector many years ago told his congregation, *"do not accept everything I say without question, but always examine it against Scripture"*.

Surely, he was affirming the words of St Luke in Acts 17:11, *“Now the Berean Jews were of more noble character than those in Thessalonica, for they received the message with great eagerness and examined the Scriptures every day to see if what Paul said was true”*.

How is it that our Christian faith is now being undermined, not by those outside the Church, that we might expect; no, we are now having to contend for the faith against those within the Church family. And not only that, but astoundingly, it is many of our leaders of the Church who are leading the charge to change doctrine and convince us to follow a new spirit, a spirit of the Age.

Sadly, it would appear, many in the Church are being seduced by the social mores of secular society rather than informed by Scripture and Church teaching. There appears to be an expectation by some Church leaders that what is now acceptable and indeed lawful in secular society, should be accepted and embraced and celebrated in the Church. Are we now being deceived into following the lead of a society that does not acknowledge God and has no interest in His statutes?

As an example of this, when Mr Drew Reid and Rev Noel Richards, licensed priest at the Anglican Cathedral in Bendigo, were married in the Uniting Church in October 2019 in Bendigo, Mr Reid was reported in the Bendigo Advertiser on 19 October, saying *“the congregation has just loved Noel and when they heard about our relationship they were just really excited for us”*.

Was there no one who raised concerns about the integrity of the marriage, given Noel’s status as an Anglican priest? No matter how much he is loved by his people, did no one think *“perhaps we may have an issue here?”* Do the Scriptures and Church doctrine mean nothing in real life situations in church communities? Is this lack of response rebellion or merely ignorance?

Why have so many leaders in the Anglican Church been captured by the Spirit of the Age? Why do they disregard their vows taken at their Ordination and/or Consecration and explain away any challenges to their “new” theology as though God has changed his mind?

By what new authority do they speak?

Why have they abandoned their vows and led their flock down another path by teaching what is false to be true – based on their own questionable thinking for whatever makes them feel good and acceptable and popular to the masses in secular society who have no thought of God Almighty, but only what suits them?

What has happened? Why has some leadership in the Anglican Communion departed from God’s word so readily on the subject of same-sex marriage, blessings and affirmations and the doctrine of marriage as defined so clearly in Scripture and Church teaching, resulting in confusion and division?

Do we now adjust our doctrine to accommodate the world and its wants? Is that what we are expected to do? Surely the best pastoral response from the Church concerning folk who struggle with same-sex attraction and desire to follow this lifestyle, is to love and welcome them into Christian community where the gospel of grace, repentance and faith is preached to all. Our identity is found in Christ, not in our sexual identity.

God is sovereign. He is our Creator, we His creation. It is not all about us and what we want. It is about God and His plans for what He is doing in the world. We are called to be His people, to belong to Him, to be holy as He is holy.

The proposed direction sought by the Diocese of Wangaratta challenges the very foundations of the Anglican Communion in the authority of Scripture, Apostolic teaching, the Formularies and we believe, contrary to the Constitution of the Anglican Church of Australia.

Further, the 1998 Lambeth resolution 1.10, "Human Sexuality" states, "*this Conference ... in view of the teaching of Scripture, upholds faithfulness in marriage between a man and a woman in lifelong union, and believes that abstinence is right for those who are not called to marriage ...*"

This resolution from Lambeth has not been rescinded in over 20 years despite flagrant ongoing disregard by many Church leaders around the world since.

THE QUESTIONS TO THE APPELLATE TRIBUNAL FROM THE PRIMATE

The Primate, Archbishop Philip Freier has put the following questions to the Appellate Tribunal;

1. Whether the use of the form of service at Appendix A to the ***Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019*** made by the Synod of the Diocese of Wangaratta to bless a civil marriage which involved a union other than between one man and one woman, is consistent with the doctrine of this Church and consistent with the Fundamental Declarations and Ruling Principles in the Constitution of the Anglican Church of Australia.
2. Whether the use of any other form of service, purportedly made in accordance with section 5 of the ***Canon Concerning Services 1992***, to bless a civil marriage which involved a union other than between one man and one woman is consistent with the doctrine of this Church and consistent with the Fundamental Declarations and Ruling Principles in the Constitution of the Anglican Church of Australia.

RESPONSE TO THE TRIBUNAL

We do not believe that:

“Blessings of persons married according to the Marriage Act 1961 regulation 2019 made by the Synod of the Diocese of Wangaratta is consistent with the Fundamental Declarations and Ruling Principles”.

We would contend that simply because marriage between members of the same sex is now lawful in secular society it does not automatically follow that the Church should fall into line and approve (and affirm and celebrate) the same. We believe it is inconsistent with the Scriptures, the doctrine and Formularies of the Anglican Church, and the Constitution of the Anglican Church of Australia.

Rev. David Ould comments in **davidould.net** on 29 June 2018, “Diocese of Wangaratta pushes ahead with same-sex blessings”;

“The Diocese of Wangaratta in June 2018 Synod passed the following Motion

‘That this Synod

- A) Acknowledges the widespread national and local support for the recent changes to Australian marriage law to include same sex couples.*
- B) Commends the pastoral value of the Bishop authorising a form of blessing for optional use within the diocese of Wangaratta alongside or in addition to a wedding conducted by a civil celebrant and*
- C) Requests that the bishop of Wangaratta ensure opportunity for the clergy and laity of the diocese to engage in further discussion to the potential diocesan provision for the blessing of civil marriages.’*

“The motion was passed overwhelmingly on the voices. A number of observations can immediately be made:

- 1. The motion comes from the leadership of the diocese, presented by an Archdeacon and the former Vicar General of the Diocese.*
- 2. The sentiment of the motion is in clear contradiction to a number of motions at the 2017 General Synod and position established in the more recent Bishops’ Agreement which Bishop Parkes agreed to.*

The Rev. David Ould continues:

“The seconder of the motion, was the Venerable Dr John Davis, who in 2017 argued that our position on marriage is simply a matter of canon law and therefore disputable. ... In his Presidential Address Bishop Parkes said, ‘I am taking my own advice as to whether I have the power at law and the proper theological, exegetical

and hermeneutical justification to promulgate a service of same sex unions for use within the Diocese of Wangaratta.'

"Bishop Parkes gave his address prior to the motion being debated and it clearly gave it a green light. It is hard to see his actions here as anything other than a direct challenge to the position that the Anglican Church of Australia has established both at a national synodical level and also amongst his fellow bishops ...

[Bishop Parkes] *'The advice I received indicated that there was no legal or theological reason for our not proceeding. In particular I am advised that the actions we are now proposing are not in breach of the Constitution or Canons of our Church and that in so acting I will not be in breach of my solemn oath to uphold the same.'*

We believe that advice to be flawed.

Richard Hooker (1554-1600), considered to be the premier theologian of the Anglican religious tradition wrote in "Anglican Faith and Worship, Of the Laws of Ecclesiastical Polity: Book V – a Modern Edition, edited by Philip Secor, 2003, page 31,

"The Church has the authority to establish what shall be the proper form of worship at any given time and what at some other time she may decide to abolish. In either case, she is within her rights. On the other hand, that which the church delivers today as true doctrine no one would say could rightly be overthrown later by a contrary pronouncement. Laws concerning order in worship are changeable by the authority of the Church; articles concerning doctrine are not."

Dr. Philip Secor writes in the flyleaf *"Portions of this great Apologia for Anglicanism, 'Of the Laws of Ecclesiastical Polity', are still required reading in most Anglican Seminaries and his ideas have been seminal for most other theologians in this denomination since the early seventeenth century"*

At the Synod for the Diocese of Wangaratta on 30 August 2019, during his Presidential Address, Bishop John Parkes addressed those present with the assertion that *"New realities challenge old certainties and call for radical interpretation if those certainties are capable of taking us forward."*

We would ask, what are those new realities and where does the authority for those new realities come from?

Bishop Parkes proceeded to explain his theological position based on his reading of Anglican Theologian John Macquarrie (Principles of Christian Theology, 1966), who cited six factors in

theological formation – experience, revelation, scripture, tradition, culture and reason. In his address to Synod Bishop Parkes contended that scripture is one way but not the only way. He suggested that the bible has been absolutized and he disagreed with what he considers to be an exaggerated regard for the Bible. He said the points that challenge the infallibility of the bible are textual variants, internal inconsistencies, and challenges to authorship. He said that revelation comes through a person, not a book. According to Bishop Parkes the best Anglican tradition is Christocentric not bibliocentric.

We would ask, how do we know Christ apart from what is revealed and written in God's word, much of which is written by those who knew him. In fact isn't Jesus the Word made flesh? To separate Christ from the Scriptures is impossible.

THE AUTHORITY OF SCRIPTURE

These examples indicate that Bishop Parkes has scant regard for the authority of Scripture which is in direct contradiction to the Fundamental Declarations part 1 (2) which declares the canonical scriptures as being the ultimate rule and standard of faith.

The Constitution states in Part 1 of the Fundamental Declarations

(2) The Church receives all the canonical scriptures of the Old and New Testaments as being the ultimate rule and standard of faith given by inspiration of God and containing all things necessary for salvation."

Article 20 of the Thirty-nine Articles states

"The Church hath power to decree rites and ceremonies, and authority in controversies of faith; and yet it is not lawful for the Church to ordain anything that is contrary to God's word written, neither may it so expound one place of Scripture that it is repugnant to another. Wherefore although the Church be a witness and a keeper of Holy Writ, yet as it ought not to decree anything against the same, so besides the same ought it not to enforce anything to be believed for necessity of salvation."

According to Dr. Gerald Bray, Theologian, in his book *"The Faith we Confess – an exposition of the Thirty-nine Articles"* (Latimer Trust, 2009) page 48,

"Article 6 does not say anything about the divine inspiration of Scripture or how it is to be interpreted, but the Anglican view on these matters is contained in the homily on Scripture, which Cranmer also wrote. In that sermon he outlines a comprehensive doctrine of how it is to be understood and interpreted. For him, the key to right understanding is a pure and humble heart. Not everything in the Bible is easy to understand, but its essential teaching is plain enough and the hard parts must be interpreted in the light of clearer ones, a principle which goes right back to the early church. He does not go into the details of textual criticism, a discipline which scarcely

existed in his day, but it is clear from what he does say that its purpose can only be to illuminate the harder parts of the text and that it will not discover anything that contradicts which is already plain ...”

In the Book of Essays, “Marriage, Same-sex Marriage and the Anglican Church of Australia”, Bishop Michael Stead’s detailed article, “*The Case Against Same-Sex Marriage*” argues,

*“... that God does not approve, bless, and delight in same-sex marriage, both because of what the Scriptures **affirm** about marriage (especially that marriage necessarily involves the pairing of a man and a woman) and because of what the Scriptures **prohibit** in relation to other expressions of human sexuality, (especially the prohibition of same-sex sexual intimacy). That is, I am making the claim that the Scriptures are sufficiently clear on this issue as to resolve the matter for us.”*

Bishop Stead continues on page 292 that in Genesis Chapters 1-2 God established a normative pattern for marriage ...Genesis 1-2 is not merely descriptive, it is normative.

“The aberrant forms of marriage in the Old Testament do not invalidate the God-given pattern of marriage, any more than 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.

The argument that Genesis 1-2 is merely descriptive and not normative is inconsistent with what Jesus says in Matthew 19...”

Marriage was established by the Creator, a one-flesh relationship. It is more than a social custom. Marriage is not just a cultural practice or social construct, but is defined in Scripture to be between a man and a woman, affirmed by Jesus in Matthew 19 in the New Testament, and reiterated by the writers of the Epistles, including Paul in Ephesians 5:25-27 and upheld in the Anglican Church.

Bishop Stead continues on page 309,

“...I have deliberately used the expression ‘sufficiently clear’, to acknowledge that sometimes there are debatable matters over which Christians will interpret the Scriptures differently, but at the same time to make the point that this is NOT one of those debates. This is not a case where there are scriptural arguments for and against, rather, the Scriptures on this issue are clear, and can only be bypassed by ‘extraordinary manoeuvres’, which I find to be completely unsustainable.”

On page 311-312 Bishop Stead concludes,

“In the current debate, there is no argument from Scripture in support of same-sex marriage. There is no argument from our Anglican interpretive tradition in support of

same-sex marriage. The arguments from reason and experience do not (and cannot) overturn what the Scriptures say”.

The Rev. Canon Dr. Mark Thompson wrote an essay entitled “Attentively reading Scripture” in the Book, “Marriage, Same-Sex Marriage and the Anglican Church of Australia”, Essays from the Doctrine Commission 2019,

Page 79. *“too often and too quickly the comment is made that the meaning of this or that passage is uncertain or that the point at issue is ‘a matter of interpretation.’ In contrast, the Danish philosopher Søren Kierkegaard (1813-1855) once wrote, ‘The Bible is very easy to understand. But we Christians are a bunch of scheming swindlers. We pretend to be unable to understand it because we know very well that the minute we understand, we are obliged to act accordingly’...”*

Page 80 *“God expects Abraham to hear and understand his call (Genesis 12). Similarly with Moses (Exodus 3), David (2 Samuel 17) and the first audience of the prophets, despite the passage of years and differences of context. Similarly the Lord Jesus Christ expected those to whom he spoke and those with whom he debated to have read and understood the Old Testament texts which he cites ‘have you read?’ he asks repeatedly. ‘It is written’ he said with an undeniable finality. God has made his mind known and he has done so in a way which is effective. Even when that word is rejected, and other words are manufactured or believed, it is not because there is something intrinsically problematic about the biblical text. It is rather because of the hardness of the human heart...”*

Page 82. *“...God’s word does not ‘go out of date’ because he knows the end from the beginning and he always speaks the truth (John 17:17; Titus 1:2). Nothing catches God by surprise. He has no need to change his mind as if he did not have the information then that we have now. Once again, the guarantee of Scripture’s ongoing truthfulness is the person and character of the God who has given it to us...”.*

CONSIDERATION OF HERMENEUTICS IN INTERPRETING SCRIPTURE

Rev. Canon Dr. Mark Thompson in his essay, “Attentively Reading Scripture on pages 84-85, in the Book *Essays from the Doctrine Commission, 2019, concerning Marriage, Same-sex Marriage and the Anglican Church of Australia*, says,

“We need to be careful that hermeneutical theory does not become a device to avoid what God has clearly and repeatedly caused to be written ‘for our instruction’ (Romans 15:4). Most of our spoken and written communication succeeds. How much more God’s! Since that is so, we need to be repentant, humble yet confident, in our determination to be directed by God’s effective communication of his person,

character and purposes. There is no middle ground where conflicting opinions on this issue can exist peaceably side by side. If God has spoken and effectively communicated to us that sexual behaviour between two members of the same sex is contrary to His will for humankind, then any attempt to bless this behaviour, or the unions in which it occurs, amounts to a repudiation of God's authority over the lives of people and indeed, over all His creatures ... the real issue is whether we shall live and teach according to God's written word or our own personal or cultural preferences."

From our perspective, we are not quibbling over "those few phrases" alone in Scripture that prohibit homosexual relationships. They are to be read within the complete context of the whole of Scripture. A text taken out of context quickly becomes a pretext. We consider God has made His plans known about humankind, from Genesis to Revelation, His intentions for His creation are clear. We cannot ignore God's created order as outlined clearly in Scripture, for to ignore or deviate is to our peril.

Nor would we agree with Rev. Canon Professor Dorothy Lee, in her submission to the Tribunal on behalf of the Diocese of Wangaratta "Many Anglicans rightly take the view that what is not actually **forbidden** in Scripture can be done with good, theological and biblical reasons". We believe that is a dangerous assertion. Paedophilia is not specifically mentioned in Scripture. Is that OK? Or has that contributed to the church's downfall in recent times?

Plain reading of Scripture should allow God's word to speak for itself.

THE ANGLICAN TRADITION

The Constitution of the Anglican Church of Australia states in Part 1, Chapter 1, Section 2 of the Fundamental Declarations

"The Church receives all the canonical scriptures of the Old and New Testaments as being the ultimate rule and standard of faith given by inspiration of God and containing all things necessary for salvation."

The historic formularies were designed by Archbishop Thomas Cranmer with the intention to give the Church of England a solid grounding in the three fundamental areas of its life – doctrine, devotion and discipline. The Articles provided its doctrinal framework, the Prayer Book settled the pattern of its devotional life and the Ordinal outlined what was expected of the clergy, whose role was key to the church's discipline.

Marriage is instituted by God. The Service of Matrimony in The Book of Common Prayer opens with the words

"...We are gathered together here in the sight of God, and in the face of this Congregation, to join together this man and this woman in holy Matrimony; which is an honourable estate, instituted by God in the time of man's innocency, signifying unto us the mystical union that is betwixt Christ and his Church; ..."

Marriage is considered to be doctrine in the Anglican Church, not just practice. Certainly the words of the Archbishop of Sydney, Dr Glenn Davies in the following report, make that clear.

Following the decision made by the Diocese of Wangaratta at their Synod in August 2019 to authorise blessings of same-sex marriage, the Sydney Anglicans newspaper "Southern Cross", October 2019, reported,

"Regional Synod Vote Ignores Clear Words of Scripture"

"The Primate of the Anglican Church of Australia, Archbishop Philip Freier has asked the small rural diocese of Wangaratta to refrain from using an order of service in which it claims to bless couples in same sex relationships..."

'it is highly regrettable that clergy and lay people in the Diocese of Wangaratta have chosen to follow their bishop rather than the clear words of Scripture concerning God's design for human sexuality (Matthew 19:4-12)'" Archbishop Davies said. "The doctrine of our Church is not determined by 67 members of a regional synod in Victoria, nor is it changed by what they may purport to authorise.

Time and time again, the General Synod has affirmed the biblical view of marriage as the doctrine of our Church. To bless that which is contrary to Scripture cannot, therefore, be permissible under our church law ... '

The article continued,

"The Board of Gafcon Australia also expressed dismay over the decision of the Wangaratta Synod. 'The resolution in Wangaratta is emblematic of a move in the Anglican Church of Australia away from our doctrine.' The Gafcon Statement said."

In the November 2019 issue of Sydney Anglicans Southern Cross Newspaper, The Dean of St. Andrews Cathedral, Sydney, The Very Rev. Dean Kanishka Raffel moved a 10 point motion, seconded by Bishop Michael Stead, reaffirming man-woman marriage as the doctrine of Scripture and the Anglican Church and declared that blessings or affirmations of same-sex marriage are contrary to Scripture and called for action where the doctrine was not being upheld.

"My heaviness of heart is because the motion before you addresses not a departure from God's word in the laws of the land, but a departure from God's word that is being promoted by bishops and synods in our Church. There is one God and Father of us all, one Lord, one faith, and one baptism – but bishops and synods in our church

nationally risk rending the fabric of our fellowship by promoting a theology of marriage that is contrary to Scripture.

It is not only our fellowship at stake. Even more seriously, departures from the teachings of Jesus on this subject are contrary to faithful discipleship and witness, deeply injurious and dismissive of countless millions of Christians living in accordance with God's word – and, perhaps most grievous of all, deprives people who identify as gay of the truth about God and his gospel.”

QUESTION 2 FROM THE APPELLATE TRIBUNAL

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

We do not believe that the regulation is valid made pursuant to the Canon Concerning Services 1992.

Section 5 (2) says, “subject to any regulation made from time to time by a Synod of that Diocese may on occasions for which no provision is made use forms of service considered suitable by the minister for those occasions.”

In Archbishop Dr Glenn Davies’ Presidential Address to the Diocese of Synod in October 2019 he said,

“Six weeks ago the Diocese of Wangaratta, with the full support of its bishop, passed a regulation that authorised a liturgy for the blessing of a couple married in accordance with the Marriage Act 1961. That sounds innocent enough, and when no authorised liturgy exists for a particular service, the Canon Concerning Services 1992 allows a Synod to make regulations for such a service, so as to authorise it for local use. However, the intention of this regulation was clear: it was to accommodate and facilitate the blessing of same-sex marriages... Yet our view of marriage is not a popular one in Australia, nor is it consistent with the definition of marriage under the amended Marriage Act 1961, after 60 per cent of the population endorsed, by postal vote, a change to the Marriage Act, which would permit same-sex marriages. Nonetheless, God’s intention for marriage has not changed. We honour him when we abide by his instruction. We cannot bless same-sex marriages, for the simple reason that we cannot bless sin ...”

Section 5 (3) says, “all variations in forms of services used must be reverent and edifying and must not be contrary to or a departure from the doctrine of this Church.”

It is clear that there is provision in the Canon to introduce a new authorised liturgy where none presently exists. However, we believe that section (3) makes it clear that any variations ... *"must not be contrary to or a departure from the doctrine of this Church."*

From our Submission as above, we believe that a liturgy to bless same-sex marriages is contrary to and a departure from the doctrine of this Church and therefore cancels out the wording of 5 (2).

Rev. John Stott writes in *"New Issues Facing Christians Today,"* Chapter 16 *"Same Sex Partnerships"*, under the sub-heading *"Sexuality and marriage in the Bible"*, page 395,

"It is of the utmost importance to note that Jesus himself later endorses this Old Testament definition of marriage. (Genesis 2:24). In doing so, he both introduced it with words from Genesis 1:27 (that the Creator made them male and female) and concluded it with his own comment ('so they are no longer two but one. Therefore what God has joined together, let man not separate' (Matthew 19:6).

He thus made three statements about God the Creator's activity. First, God made them male and female. Secondly God 'said' that a man must leave his parents and cleave to his wife. Thirdly, he joined them together in such a way that no human being might put them apart.

Here then are the three truths which Jesus affirmed:

- 1) heterosexual gender is a divine creation;*
- 2) heterosexual marriage is a divine institution; and*
- 3) heterosexual fidelity is the divine intention.*

A homosexual liaison is a breach of all three of these divine purposes."

JUSTICE AND HUMAN RIGHTS

During the debates in Australia in 2017, before the Plebiscite to decide whether same-sex marriage would become law in Australia, "marriage equality" became the expression used in society and the media to convince voters that this was an equality issue, a human right. This is how it is perceived now, especially since the law has passed in Australia. However, it is a misnomer. However much people both in the church and out of it, may wish it to be so, same-sex marriage is not the same as heterosexual marriage, on so many levels and particularly in the Christian Church as detailed above, given its creational purpose in Scripture. It is not a matter of justice or injustice.

Rev. John Stott in *"New Issues facing Christians today"*, pages 404-405 says,

"If some argue for homosexual partnerships on the basis of the love involved, others do so on the basis of justice ... The justice argument runs like this: "Just as we may

not discriminate between persons on account of their gender, colour, ethnicity or class, so we may not discriminate between persons on account of their sexual preference. For the God of the Bible is the God of justice, who is described as loving justice and hating injustice, Therefore the quest for justice must be a paramount obligation for the people of God...

...The vocabulary of oppression, liberation, rights and justice, however, needs careful definition. 'Gay liberation' presupposes an oppression from which homosexual people need to be set free, and 'gay rights' imply that homosexual people are suffering a wrong which should be righted. But what is this oppression, this wrong, this injustice? If it is that they are being despised and rejected by sections of society on account of their sexual inclination, are in fact victims of homophobia, then indeed they have a grievance which must be redressed. For God opposes such discrimination and requires us to love and respect all human beings without distinction. If, on the other hand, the 'wrong' or 'injustice' complained of is society's refusal to recognise homosexual partnership as a legitimate alternative to heterosexual marriage, then talk of 'justice' is inappropriate, since human beings may not claim as a 'right' what God has not given them."

Therefore, blessing same-sex unions, even following a perfectly legal civil marriage cannot be sanctioned in the Church.

DOCTRINE OF GOD'S GRACE, SIN AND REPENTANCE

The Apostle Paul writes in 1 Corinthians 6:9, after citing so many sinful behaviours, (and that includes homosexual behaviour) *"and that is what some of you were, but you were washed, you were sanctified, you were justified in the name of the Lord Jesus Christ and by the Spirit of our God."*

Also, following Paul's anguish about his own struggles with Law and Sin in his own life in Chapter 7 of his Epistle to the Romans, he continues in Chapter 8,

"therefore, there is now no condemnation for those who are in Christ Jesus, because through Christ Jesus the law of the Spirit who gives life has set you free from the law of sin and death. For what the law was powerless to do because it was weakened by the flesh, God did by sending his own Son in the likeness of sinful flesh to be a sin offering ... Those who live according to the flesh have their minds set on what the flesh desires; but those who live in accordance with the Spirit have their minds set on what the Spirit desires. The mind governed by the flesh is death but the mind governed by the Spirit is life and peace. The mind governed by the flesh is hostile to God; it does not submit to God's law, nor can it do so. Those who are in the realm of the flesh cannot please God."

What concerns us in many churches today is that there is little expectation of repentance before our holy God when coming into the church community. There is such an expectation by the LGBTIQ+ community that the Church should not only welcome them and their lifestyle but also affirm and celebrate it on their terms. We are all required to come in repentance and faith for our lives that have fallen short of God's standard.

Romans 12:2 says,

“do not be conformed to this age, but be transformed by the renewing of your mind, so that you may discern what is the good, pleasing, and perfect will of God.”

It is only by His grace in Christ Jesus that any of us can stand before him.

The Church is not a drop-in centre or a social club for people to feel better about themselves. We are called to be the Body of Christ – a new creation. (2 Corinthians 5:17). Our identity is now in Christ so we live for His glory and purpose, not for ourselves, our sexual orientation or whatever makes us feel good.

“Flee from sexual immorality (and that means all sexual behaviour apart from sexual relationship within marriage ordained by God between a man and a woman). All other sins a person commits are outside the body, but whoever sins sexually, sins against their own body. Do you not know that your bodies are temples of the Holy Spirit, who is in you, whom you have received from God? You are not your own; you were bought with a price. Therefore honour God with your bodies.” (1 Corinthians 6:18-20)

A FINAL COMMENT FROM C.S. LEWIS, CHRISTIAN APOLOGETICS EASTER 1945

“It is your duty to fix the lines (of doctrine) clearly in your minds; and if you wish to go beyond them you must change your profession. This is your duty not specifically as Christians or as priests but as honest men. There is a danger here of the clergy developing a special professional conscience which obscures the very plain moral issue. Men who have passed beyond these boundary lines in either direction are apt to protest that they have come by their unorthodox opinions honestly. In defence of those opinions they are prepared to suffer obliquely and to forfeit professional advancement. They thus come to feel like martyrs. But this simply misses the point which so gravely scandalises the layman. We never doubted that the unorthodox opinions were honestly held: what we complain of is your continuing in ministry after you have come to hold them...”

DISCRIMINATION BILL GOES BEYOND MATTERS

It surely is not for judges to decide if people interpret their faith mistakenly

MARK FOWLER

Attorney-General Christian Porter's Religious Discrimination Bill is expected to be tabled in the final parliamentary sitting of the year starting next week. In his address to the National Press Club on Wednesday he indicated he would be making various alterations to the draft bill released in August. However, one objection particularly prevalent among religious groups remains unanswered.

To gain the benefit of the bill's protections, a person must convince a judge their conduct "may reasonably be regarded as being in accordance with the doctrines, tenets, beliefs or teachings of (their) religion". In non-legalise: a person will not be protected if a judge decides their sincerely held convictions are not an accurate interpretation of their religion. There are a strictly defined set of legitimate grounds on which religious belief may be limited in a

democratic society. They do not include a judge deciding that you have mistakenly interpreted your religious obligations.

Unfortunately, this doctrinal test is the engine room of the bill's protections. Satisfying this test is a critical determinant for those asserting a claim of religious discrimination; for religious organisations seeking to defend a discrimination claim; for individuals defending a discrimination claim that has resulted from a statement of belief they have made; and for health practitioners asserting a conscientious objection.

It is often forgotten that the original motivation for the Enlightenment formulation of the "separation of church and state" included the imperative to keep the state out of religion. Citing this foundational liberal philosophical precept, leading jurists have cautioned against placing the content

of religious obligation in the gift of the judicial arm of government. Canadian Supreme Court Justice Frank Iacobucci has said: "The state is in no position to be, nor should it become, the arbiter of religious dogma... Secular judicial determinations of theological or religious disputes, or of contentious matters of religious doctrine, unjustifiably entangle the court in the affairs of religion." Consistently the most superior Anglophone courts, including the Australian High Court, the House of Lords and the supreme courts of the US and of Canada, have all directed judges interpreting belief to eschew determinations as to the accuracy of an individual's self-conceived religious duties and focus instead upon their sincerity.

It is a little-known fact the definition of religion provided by the High Court in the 1983 Scientology case is one of our most widely recognised judicial exports. There justices Anthony Mason and Gerard Brennan required a focus on the "integrity" or "sincerity" of a believer, a formulation they considered permits courts to refuse "sham" religions such as "the

claimed religion of 'Chief Boo Hoo' and the 'Boo Hoos'". In effect, the bill displaces the High Court's jurisprudence by requiring a judge to determine what conduct is permitted or required by the relevant religion, regardless of the genuinely held convictions of the believer.

It should not be thought, however, that requiring a focus on religious burdens as self-perceived allows a believer to write themselves into legal protection.

As Mason and Brennan said: "The mantle of immunity would soon be in tatters if it were wrapped around beliefs, practices and observances of every kind whenever a group of adherents chose to call them a religion." It is for this reason that there are strictly articulated grounds for limiting religious manifestation under international law.

However, the bill permits that judges may prevent a person from acting in a manner they genuinely consider is consistent with their religious commitments simply by refusing to acknowledge their beliefs as correctly religious. In substance, the judicial task of iden-

tifying the content of a religious belief becomes the backdoor means of limiting that belief. In this way, the state is discharged from the burden to provide justification for restrictions imposed upon liberty.

Conversely, having the precisely held beliefs, as opposed to a constructed irreality, assessed against limitations permits religious believers to understand the grounds on which any limitations are placed on their beliefs.

It thus preserves the prospect of rational acceptance of the limitation, and therefore regard for the law's legitimacy.

More to the point, requiring judges to determine the correctness of religious convictions is not necessary for a court to reach a conclusion on the real question that presents in religious discrimination claims: whether the particular manifestation of the belief should be permitted or prohibited.

The issues at stake are best illustrated by example. Assume Israel Folau's religious discrimination claim against Rugby Australia falls for determination under the bill. If the Folau controversy has

demonstrated anything, it is that sincere people of faith can differ on what the requirements of doctrine are. However, for Folau's claim to stand or fall on whether a judge considers his post about Christ's love for "sinners" and ultimate role in judgment was "reasonably ... in accordance with" Christian doctrine is an absurd proposition.

It is difficult to see why either side of politics should refuse the retention of the separation of church and state

However, this is the calculus the bill requires. As US chief justice Warren Burger said: "It is not within the judicial function and judicial competence to inquire whether the petitioner or his fellow worker more correctly perceived the commands of their common faith. Courts are not arbiters of scriptural interpretation." The Australian Catholic Bishops Conference's submission on the bill

OF RELIGION

reflects this concern: "It should be a matter of policy to ensure that courts do not determine the beliefs of a religious community."

Whether the Labor Party will support the bill is yet unknown. Its reply will be the first real indication as to whether it has heeded the lessons of this year's election.

The lesson for Labor's engagement with faith, at least as conceptualised by the recent review into the May defeat, is: "The party would be wise to reconnect with people of faith on social justice issues and emphasise its historic links with mainstream churches." The review frankly acknowledged that among the "groups of voters who swung most strongly against Labor were self-described Christians." Given the weight of judicial authority I have outlined, it is difficult to see why in this debate either side of politics should refuse the retention of this foundational limb of the separation of church and state within our judicial system.

Finally, on what has been previously thought to present a separate front, earlier this year the government referred the question of reforms to the religious exemp-

tions in the Sex Discrimination Act to the Australian Law Reform Commission. It has since been keen to stress the debate on the Religious Discrimination Bill does not affect the Sex Discrimination Act. However, the result of a recent exchange between ALRC president Sarah Derrington and Labor senator Kim Carr in Senate estimates seems to have escaped attention. Derrington clarified: "What we've been asked to do is to restrict ourselves to a drafting exercise which would insure that the Sex Discrimination Act and the Fair Work Act were consistent with the government's bill." If correct, that means the bill about to be introduced is about much more than just religious discrimination.

Assuming the government follows the ALRC recommendations, the outcome of the parliamentary debate will determine the content of the proposed bill on religious freedom across government, with discrimination law.

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