

THE APPELLATE TRIBUNAL OF THE ANGLICAN CHURCH OF AUSTRALIA

Submission from EFAC (Evangelical Fellowship in the Anglican Communion) Australia in relation to the Newcastle Reference.

EFAC Australia is a national body with branches in each State and Territory. EFAC Australia is a fellowship of like-minded members who are faithful Anglicans and reflect the evangelical heritage of the Anglican Church. EFAC members happily uphold the Constitution of the Anglican Church of Australia and its Canons, including the Fundamental Declarations and the Ruling Principles from the *Book of Common Prayer*, the Ordinal and the 39 Articles.

In making this submission we are conscious that many of our members serve as clergy or lay leaders in Dioceses where they, as evangelical Anglicans, are in a minority. As such they have an active interest in these matters because the outcome will have real, personal implications for them. This submission is significantly based on feedback from evangelical clergy and laity in the Diocese of Newcastle, many of whom believe that the *Clergy Discipline Ordinance 2019 Amendment Ordinance 2019* is such a significant departure from the teaching of Christ and the doctrine of our Church they would have to consider leaving their Diocese or to seek alternative episcopal oversight.

It is estimated that one third of the Newcastle clergy are traditional /conservative on the issue of same-sex marriage. This is consistent with the voting at the 2019 Newcastle Synod, where the *Amendment Ordinance 2019* was opposed by one third of the house of clergy. The evangelical Anglican parishes are, with few, if any exceptions, the strongest parishes in the Diocese of Newcastle, with over fifty percent of the laity (in terms of weekly attendance) in the Diocese attending evangelical congregations. The outcome of this decision has the potential to disenfranchise one third of the clergy and the majority of the laity of the diocese, and in particular their relationship with their Bishop.

This is because the *Clergy Discipline Ordinance 2019 Amendment Ordinance 2019* requires the Bishop's assent to come into effect. Notwithstanding clause 7 ("This Synod confirms that any assent by

the Bishop to this ordinance expresses nothing more than that the Bishop assenting to the Synod's wish that it have a process for further deliberation"), the effect of the Bishop's assent is to authorise the overriding of the proper discipline for breaches of the Church's doctrine of marriage in the diocese. The Amending Ordinance implicitly recognises that clergy blessing a same-sex marriage and/or being in a same-sex marriage is contrary to the doctrine of marriage of our Church, and seeks to prevent discipline charges for breaches of our doctrine. As a result, by giving assent to this Ordinance, the Bishop is giving express permission for departures from the doctrine of the Church. This would be deeply problematic for many clergy and lay people.

It would also be similarly problematic for many in their relationship with the Bishop of Newcastle, should the interpretation of the *Canon Concerning Services 1992* put forward by the Diocese of Newcastle in its submission on the Wangaratta Regulation be accepted by the Appellate Tribunal. In paragraph (f), the Diocese of Newcastle argues –

The General Synod in adopting the Canon [Concerning Services 1992] provided the sole mechanism for determining a question concerning the reverence, edification and doctrine of any form of service authorised under the Canon. The General Synod determined that such jurisdiction rested with the bishop of the diocese. It is the responsibility of the bishop of the diocese in this matter to ensure that the rules of the church are upheld.

If this is the case, then is it immaterial whether the Newcastle's proposed *Bill for the Blessing of Persons Married According to the Marriage Act Regulation 2019* is passed or not, in that any minister is already permitted to create a new service for those occasions for which no provision is made, and (if Newcastle's submission is valid), the Bishop of the diocese is the sole and final arbiter as to what constitutes a departure from the doctrine of the Church. This would empower the Bishop of any diocese to authorise any departure from the doctrine of the Church, including the blessing a same-sex marriage in an Anglican church. Evangelical Anglicans would find it difficult to submit to a Bishop who did this.

As a result, we urge the Appellate Tribunal to give careful consideration to the impact of any outcome which effectively

allows diocesan (or episcopal) autonomy on these matters. No single Diocese or Bishop should be allowed to make such radical changes that are not supported by a Canon of General Synod. This is especially the case for a Diocese such as Newcastle, where Anglican parishes with an evangelical heritage are in the minority in the Synod.

In every Anglican jurisdiction overseas where the blessing of same-sex marriage has been officially sanctioned in a diocese, it has led to an inevitable tear in the fabric of the Church. The most recent example of this occurred in 2018 in New Zealand, where the Churches there are dealing with the fallout of this decision. The New Zealand option was touted as a way forward that would allow people with deeply held and differing convictions about same-sex relationships to remain together in the one Church. It has manifestly failed to achieve this.

If the Diocese of Newcastle is allowed to take its own approach to the doctrine of marriage, and if the Bishop of Newcastle assents to a Canon that prevents those who depart from Christ's teaching about marriage from being disciplined, and if the Bishop gives a determination under section 5(4) of the *Canon Concerning Services 1992* that the blessing of a same-sex marriage is not a departure from the doctrine of the Church, then the likely outcome is that around a third of the clergy and half of the laity (in terms of weekly attendance) would no longer be able to submit to the authority of the Bishop of Newcastle. It will then become a significant issue for the General Synod as to how to provide a way that they could continue on as faithful members of the Anglican Church of Australia.

Evangelical Anglicans in the Diocese of Newcastle are deeply disturbed by what happened at their Synod in 2019. Two contentious ordinances came in the form of two private members Bills, which were presented in the synod papers a few weeks prior to the Synod. Due to the late notice of these Bills there was no opportunity to discuss the ordinances across the Diocese prior to the Synod. Further to this, the Bishop of Newcastle and his two Assistant Bishops provided no input into the discussions of these ordinances during synod, which is a highly unusual practice on such a significant matter.

The Anglican Church of Australia is an episcopal church. We look to our Bishops to teach the faith and to maintain good order. Bishops are bound by their oaths to uphold the Constitution of the Anglican Church of Australia. We urge the Appellate Tribunal to uphold this big-picture view of the Anglican Church of Australia, and resolve this issue in a way that will allow the national church to work through these issues together in the forum of the General Synod.

**References with the respect of the *Clergy Discipline Ordinance 2019 Amending Ordinance 2019 (Diocese of Newcastle)*.
Submission from EFAC Australia, on behalf of EFAC Branches in each State and Territory and evangelical Parishes across Australia**

Introduction

1. This submission sets out the position of EFAC Australia with respect to:
 - (a) the questions posed by the Primate regarding section 63 of the Constitution concerning the Clergy Discipline Ordinance 2019 Amending Ordinance 2019 (Diocese of Newcastle) in the reference dated 31 October 2019 at the request of the Bishop of Newcastle, and
 - (b) the questions posed by 25 members of the General Synod regarding the Clergy Discipline Ordinance 2019 Amending Ordinance 2019 (Diocese of Newcastle) in the reference dated 7 November 2019.

The Questions

Primate's Reference

2. EFAC submits that the Appellate Tribunal should answer the Primate's Reference as follows:

Question 1: The *Clergy Discipline Ordinance 2019 Amendment Ordinance 2019* of the Diocese of Newcastle is **inconsistent** with the Fundamental Declarations and the Ruling Principles because it purports to permit a minister to participate in a service for the blessing of a same-sex

marriage, which is contrary to the authorised standard of doctrine of this Church. Section 4 of the Constitution requires 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".

Question 2: The Synod of the Diocese of Newcastle does NOT have the authority under section 51 of the Constitution to pass the Clergy Discipline Ordinance 2019 Amendment Ordinance 2019. The legislative power recognised by Section 51 is "subject to this Constitution" and therefore must be consistent with it. However, clause 3(a) and clause 3(c) of the Amendment Ordinance 2019 are **inconsistent** with Section 54 of the Constitution, in that these clauses purport to prevent charges arising under subsections 54(2) and 54(2A) to be brought before the Diocesan Tribunal. A member of the clergy who participates in the blessing of a same-sex marriage has committed a breach of ritual and ceremonial and a breach of discipline. A member of the clergy who enters into a same-sex marriage has committed a breach of discipline, a breach of faith, and (prime facie) has committed the offences of unchastity and sexual misconduct. Clause 3(b) is not inconsistent with the Section 54, because it is not an offence under the Constitution not to participate in a same-sex blessing.

Question 3. Section 5(c) of the Schedule to the *Anglican Church of Australia Constitution Act 1902 (NSW)* stipulates that an ordinance passed by a Synod will not be valid or have any effect unless the Bishop of the Diocese gives assent in writing within one month. There is no provision in the Constitution to defer assent pending advice from the Appellate Tribunal. Since the one month period has now passed, the ordinance lapses and the Synod is required to pass the ordinance again.

GS Member Reference

3. EFAC submits that the Appellate Tribunal should answer the Questions referred by 25 members of the General Synod as follows:

Question 1. If the Ordinance comes into effect, the amendment made by clause 3 of the Ordinance will **NOT** prevent the Diocesan Tribunal of the Diocese of Newcastle (the "Diocesan Tribunal") from hearing and determining under section 54(2) of the Constitution a charge of breach of faith or discipline in respect of a person licensed by the Bishop of the Diocese of Newcastle (the "Bishop"), or any other person in holy orders resident in the Diocese of Newcastle (the "Diocese"). It is breach of discipline and a breach of faith for a member of the clergy to be married to a person of the same-sex. It is a **breach of discipline** because it is a breach of the obligations in the ordinal to "live according to the teaching of Christ" with respect to marriage, and is also a breach of the obligation to minister and teach others to uphold the doctrines of Christ, as this Church has received them, in relation to the Church's doctrine of marriage. It is a **breach of faith** because it is inconsistent with the doctrine of this Church with respect to marriage.

Question 2. If the Ordinance comes into effect, the amendment made by clause 3 of the Ordinance will **NOT** prevent the Diocesan Tribunal from hearing a charge under section 54(2A) of the Constitution relating to an offence of unchastity or an offence involving sexual misconduct against a member of clergy where the act of the member of clergy which gave rise to the charge relates to the member of clergy marrying or being married to a person of the same sex, in circumstances where the act occurred in the Diocese or the member of clergy was licensed by the Bishop or was resident in the Diocese within two years before the charge was laid. It is an **offence of unchastity** (and also an offence involving sexual misconduct) for a member of the clergy to be in a sexual relationship other than in the context of a marriage recognised by this Church, and a same-sex marriage is *prima facie* evidence of this.

Question 3. If the Ordinance comes into effect, the amendment made by clause 3 of the Ordinance will **NOT** prevent the Bishop or any five adult communicant members of this Church resident within the Diocese promoting a charge to the Diocesan Tribunal under section 54(3) of the Constitution against a person licensed by the Bishop or against any other person in holy orders resident in the Diocese alleging a breach of faith, ritual or ceremonial by such a person because that person has participated in a service in which they have pronounced the blessing of a marriage solemnised in accordance with the Marriage Act 1961 in which the persons being married are of the same sex (assuming the first proviso in section 54(3) has been fulfilled). Participation in the solemnisation of a same-sex marriage by a member of clergy is a **breach of ritual and ceremonial**, because it involves the use of a liturgy which is contrary to the doctrine of marriage of this Church, which is not (and cannot be) authorised by a Bishop or Canon of this Church. Such participation is also a **breach of faith** (and also a breach of discipline), because it is a breach of the obligation to "hold to the faith" and a breach of the ordination vow to minister and teach others to uphold the doctrines of Christ, as this Church has received them, in relation to the Church's doctrine of marriage.

Question 4. If the Ordinance comes into effect, the amendment made by clause 3 of the Ordinance will **NOT** prevent the Bishop or any five adult communicant members of this Church resident within the Diocese promoting a charge to the Provincial Tribunal in its original jurisdiction under section 54(3) of the Constitution against a person licensed by the Bishop or against any other person in holy orders resident in the Diocese alleging a breach of faith, ritual or ceremonial by such a person because that person has participated in a service in which they have pronounced the blessing of a marriage solemnised in accordance with the Marriage Act 1961 in which the persons being married are of the same sex (and assuming the first proviso in section 54(3) has been fulfilled). For reasons, see answer to Question 3.

Question 5. If the Ordinance comes into effect, the amendment made by clause 3 of the Ordinance will **NOT** prevent a board of enquiry, appointed by ordinance of the Synod of the Diocese and in exercise of its function under the second proviso in section 54(3) of the Constitution, from allowing a charge relating to a breach of faith, ritual or ceremonial arising from an act mentioned in 1, 2, 3 or 4 above proceeding to be heard by the Diocesan Tribunal or the Provincial Tribunal in its original jurisdiction as a charge proper to be heard. For reasons, see answers to Question 3.

On the matter of same-sex blessings and marriage of clergy of the same sex, within the Anglican Church of Australia, see further our submission regarding the Wangaratta Resolution.

Conclusion

It is untenable that the framers of our Constitution intended that any diocese should be able to unilaterally change the doctrine and practice of our Church. To do this (without at least the sanction of a General Synod Canon authorising such a change) means that Evangelical (as well as Anglo-catholic or other) clergy in a minority situation in such a diocese will find themselves in an untenable position in relation to their Bishop.

The Clergy Discipline Ordinance 2019 Amendment Ordinance 2019 of the Diocese of Newcastle is inconsistent with the Constitution and Canons of the Anglican Church of Australia. If it is assented to by the Bishop of Newcastle, many will feel in good conscience that they cannot submit to the authority of a Bishop who authorises actions, which are contrary to the teaching of Christ and the doctrine of the wider Anglican Church of Australia.

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Chair
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