



7

IN THE APPELLATE TRIBUNAL

ANGLICAN CHURCH OF AUSTRALIA

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

AND IN THE MATTER OF the *Clergy Discipline Ordinance 2019 Amending Ordinance 2019* of the Synod of the Diocese of Newcastle

**SUBMISSIONS OF THE REVEREND ASSOCIATE PROFESSOR MATTHEW ANSTEY AND
THE REVEREND DOCTOR STEVEN OGDEN¹**

1. The appropriateness of the questions referred

- 1.1 As to the original reference by the Primate of 31 October 2019 of three questions pursuant to section 63(1) of the Constitution, it is submitted that the first two questions are capable of constituting questions arising under this Constitution. If the answer to the first question is "Yes", there is no need to consider the second question. Similarly, if the answer to the first question is "No", nor is there any need to consider the second question. It is not proposed to address in these submissions the third question or any of the questions remitted by the Primate on 6 November 2019.
- 1.2 Section 51 of the Constitution imposes a limitation on the power of the Synod of a Diocese to pass legislation inconsistent with the Constitution. This follows from the express words of section 51. Section 51 provides that the legislative power of a Diocese is "*Subject to this Constitution...*". These are words of limitation. If Diocesan legislation, or some aspect of it, is inconsistent with the Constitution it must be invalid to the extent of that inconsistency.
- 1.3 This follows from the fact that the presumption of legislative validity places the onus firmly on those opposing the validity of the *Clergy Discipline Ordinance 2019 Amending Ordinance 2019* to make out their case. A Diocese has power to legislate for the "*order and good government*" of the Church in its Diocese. These are expansive words, limited only by the terms of the Constitution (i.e., section 51). Any legislation passed by a Diocesan Synod must be presumed to be for the "*order and good government*" of the Diocese. As such, consistent with the opening words of Section 51, any question of validity can only be determined by whether the legislation is inconsistent with the Constitution. If it is not inconsistent, it must otherwise be valid. This approach also mirrors the language of section 29(4) of the Constitution. Further, it is the only logical way in which section 4 of the Constitution can be applied,

¹ Matthew is an Honorary Associate Priest in the Parish of Holy Innocents, Belair (Adelaide) and a member of the Doctrine Commission, Anglican Church of Australia. He is Director of Higher Degree Research, Alphacrucis College. Matthew is also a Research Fellow, Charles Sturt University, Public and Contextual Theology Strategic Research Centre; Visiting Research Fellow, University of Adelaide, School of Humanities (Linguistics); Honorary Research Associate Professor, University of Queensland, School of Historical and Philosophical Inquiry; and Associate Professor (Full Academic Status), Flinders University, The College of Humanities, Arts and Social Sciences (Language, Literature and Culture). Steven is parish priest at St Oswald's Parkside, adjunct lecturer in theology at Charles Sturt University, and Research Fellow with the Centre for Public and Contextual Theology CSU. He is formerly Dean of St Peter's Cathedral Adelaide and Parish Priest at St Oswald's Parkside and previous and Principal of St Francis Theological College, Brisbane.

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

1.4 This is not to say that the *Clergy Discipline Ordinance 2019 Amending Ordinance 2019* is invalid as lacking a source of power. Clearly, it was within the power of the Synod of the Diocese of Newcastle to pass this legislation “*for the order and good government of this Church*” within its Diocese. The legislative power of the Synod of the Diocese of Newcastle remains, and always remains, subject to section 51 of the Constitution.

1.5 In summary, it is only proposed to address the first of the three questions referred pursuant to section 63(1) of the Constitution on 31 October 2019.

2. The Fundamental Declarations and Ruling Principles

2.1 On the assumption that the Appellate Tribunal decides that it has jurisdiction in the matter, then effectively the one question is: “*Whether the Clergy Discipline Ordinance 2019 Amending Ordinance 2019 made by the Synod of the Diocese of Newcastle is inconsistent with the Fundamental Declarations and Ruling Principles in the Constitution of the Anglican Church of Australia*”.

2.2 These submissions now address that question. We refer to and rely upon the submissions made by The Reverend Associate Professor Matthew Anstey on the subject matter of the *Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019 of the Diocese of Newcastle, mutatis mutandis*, sections 2.3 to 8.10, to assert that the first question should be answered in the negative, that is, it is not inconsistent.

2.3 We reserve the right to make further responsive submissions by **Friday 14 February 2020** as directed by the Tribunal.