



GENERAL SYNOD APPELLATE TRIBUNAL

Primate's Reference under Section 63 of the Constitution

Blessing of Persons Married According to the
Marriage Act 1961 Regulations 2019 (Wangaratta)

General Synod Appellate Tribunal - Wangaratta

Appellate Tribunal - Wangaratta

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IN THE APPELLATE TRIBUNAL

ANGLICAN CHURCH OF AUSTRALIA

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

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

PRIMARY SUBMISSIONS BY SYNOD OF DIOCESE OF WANGARATTA

Introduction

1. These submissions set out the position of the Synod of the Diocese of Wangaratta (**Wangaratta**) with regard to the questions posed by the Primate regarding the *Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019* (**Regulations**) in the reference dated made on 5 September 2019.
2. Wangaratta reserves the right to add to these submissions following receipt of submissions from other interested parties, including at any oral hearing set down by the Tribunal.
3. While these submissions anticipate some of the matters raised by the Primate's subsequent reference made 14 October 2019, Wangaratta will make further submissions directed to that subsequent reference in accordance with the timetable set by the Tribunal in its directions dated 7 November 2019.

Summary of these submissions

4. Question 1 does not raise a matter under the Constitution and should not be answered. In the alternative, if answered, it should be answered "yes".
5. Question 2 can be understood as asking one of two quite distinct but related questions:
 - 5.1. Whether the *Canon Concerning Services* provided a source of legislative power for the making of the Regulations; or
 - 5.2. Whether the form of blessing specified for use by the Regulations can be said to be consistent with the discretion given to ministers and the Bishop by

section 5 of the *Canon Concerning Services*, and more specifically, whether the form of blessing is "reverent, edifying, and not contrary to doctrine".

6. In circumstances where it is not clear which meaning was intended by the Primate in proposing question 2, these submissions address both the legislative competence of Wangaratta under the *Canon Concerning Services* and the compatibility of the Regulation and its schedule with the doctrine (as that term is defined for the purposes of the *Canon Concerning Services*). On either construction of the question, question 2 should be answered "Yes" because -
 - 6.1. The *Canon Concerning Services* contemplates regulations being made by a Synod in circumstances where there are no authorised forms for a particular occasion. There being no authorised form for the occasion of persons in a civil marriage who seek a blessing, it was open to Wangaratta to legislate on the question.
 - 6.2. The Church's teaching on marriage as reflected in the BCP marriage service is not doctrine because it is not teaching on a question of faith but instead teaching on a question of (variously) ceremonial, ritual and discipline. No question of inconsistency with doctrine thus arises. 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.
7. Strictly, question 2 does not raise a matter under the Constitution either. However, Wangaratta invites the Tribunal to deal with question 2 as a matter arising under the Constitution on the basis that the question raises the proper definition of doctrine in the Constitution and by necessary extension requires consideration of the meaning of faith for the purposes of the Constitution. It makes that invitation with the aim of enabling the Tribunal to deal with the substance of the referral rather than dismissing the entirety of the referral on the basis of the way the questions have been framed. In making that invitation Wangaratta anticipate some of the matters likely to be raised in the Primate's subsequent reference dated 14 October 2019.

The Regulations

8. The questions posed by the Primate must be considered and answered by reference to the text of the Regulations and to the text of the form of service which the Regulations adopt.
9. The Regulations -

- 9.1. specify the form of service to be used if a minister is asked, and wishes, to conduct a service of blessing of persons already married under the *Marriage Act*;
 - 9.2. provide for freedom of conscience for those ministers who do not wish to conduct such a service; and
 - 9.3. require records to be kept of the number of such services.
10. The form of service authorised for use under the Regulations -
- 10.1. is not a marriage service;
 - 10.2. is confined for use where the persons involved are not already married in a Christian service;
 - 10.3. does not purport to give the civil marriage that has previously occurred the status of Christian marriage;
 - 10.4. is a service blessing the persons in the civil marriage; and
 - 10.5. does not specify the sex of the persons who have been married.

The Appellate Tribunal's jurisdiction

- 11. The Appellate Tribunal has jurisdiction where a matter arises under the Constitution (section 63) or where an Act or Proposal of the General Synod is referred (section 29).
- 12. The Regulations are not an Act or a proposed Act of the General Synod and so the section 29 jurisdiction does not arise. They are made under a Canon of the General Synod but that Canon itself is not sought to be impugned by the questions.
- 13. The present referral seeks to enliven the Appellate Tribunal's jurisdiction to consider under section 63(1) of the Constitution. Such jurisdiction will only exist if the Regulations themselves give rise to a question under the Constitution.
- 14. Section 63 has been given a beneficial construction in past decisions of the Tribunal:

The purpose of s 63 is to enable the Primate... to require the Appellate Tribunal to give an advisory opinion with respect to a possible constitutional issue – a question arising "under this Constitution" either in the narrow sense of a question arising pursuant to the Constitution (for example, in virtue of some right granted by the Constitution) or in the broader sense of a question arising with respect to the Constitution or its interpretation....IN

short, it gives the Primate...the power to obtain an advisory opinion on a constitutional question.¹

15. However, a question does not necessarily arise under the Constitution merely because a person or body of persons wishes to know whether something is or is not "consistent with" the Constitution. Nor is it appropriate to seek to use the Tribunal as a sounding board for matters of theological contention between different traditions and emphases within the Anglican Church of Australia.²
16. In references under section 63 the Appellate Tribunal only decides theological issues for the purposes of, or in the course of determining legal questions arising under the Constitution. It is not, and cannot as constituted be, a final court of appeal for the Church on theological issues³ and should act in accordance with the views of Handley QC (as he then was) in the *Report of the Appellate Tribunal Opinion on the Ordination of Women to the Office of Deacon Canon 1985*:

Once it becomes clear that there are powerful and respectable arguments on both sides of a theological question, and that question has not been authoritatively settled for the Church, then in my opinion it is impossible for us [the Appellate Tribunal] to "finally" decide such issues. If both views are reasonably open the question ceases to be a legal one. The question is and remains a theological one to be decided elsewhere in the Church.... This Tribunal does not exist to correct highly debatable theological errors on the part of our Bishops, Assessors and General Synod.⁴

17. The task of the Tribunal is find an answer to the questions it is asked within the four corners of the Constitution after duly considering what that Constitution permits, what it requires and what it prohibits.⁵
18. The **content** of doctrine is a matter upon which the Tribunal may seek the opinion of the House of Bishops or the board of assessors⁶. However, whether or not a particular teaching of the Church has the constitutional status of doctrine is a legal question which only the Tribunal can answer.
19. Section 59(1) applies to this reference as a matter involving any question of ritual, ceremonial and discipline.

¹ *Report of the Appellate Tribunal Opinion on the Ordination of Women to the Office of Deacon Canon 1985* 4 March 1987: reasons of the President at page 11

² *Appellate Tribunal Opinion concerning certain matters to do with the conduct of church services* 7 May 1996, at page 7.

³ *Opinion of the Appellate Tribunal on two references in 1990 relating to the Ordination of Women* reasons of Handley J at pages 2 and 4

⁴ At page 113

⁵ *Report of the Appellate Tribunal Opinion on the Ordination of Women to the Office of Deacon Canon 1985* 4 March 1987: reasons of the Vice President at page 78

⁶ Section 58 of the Constitution

20. The Tribunal is not bound to follow its previous decisions but it should be slow to depart from them.⁷

Question 1 does not raise a matter arising under the Constitution

21. Question 1 does not ask a constitutional question. The Regulations are not an Act or Proposal to which the procedure in section 29 applies. They are an exercise of legislative power by Wangaratta under the provisions of the *Canon Concerning Services*. Whether they are a valid and proper exercise of that power depends on the terms of the Canon, which requires that any form of service used for an occasion not otherwise provided for must be reverent, edifying and not contrary to or a departure from the doctrine of the Church.
22. The question does not call for the interpretation of any provision of the Constitution. It should not be answered. To the extent that the definition of doctrine is raised by the Regulations, question 2 includes that issue and it can be considered in the context of the *Canon Concerning Services*.
23. Question 1 also poses a test (of consistency with the Fundamental Declarations and Ruling Principles) that is too high. A diocese is empowered by its own Constitution, and subject only to the limitations of the Constitution, to make regulations with respect to order and good government of the Church within the diocese.⁸ Whether a particular ordinance is in fact conducive to the order and good government of a diocese is matter solely for the judgement of the relevant Synod.⁹ If a question were to be posed by reference to the Fundamental Declarations and Ruling Principles it ought be posed by reference to whether any part of the Regulations are *inconsistent* with those Declarations and Principles.
24. For the avoidance of doubt, there is nothing in the Regulations that is inconsistent with the Fundamental Principles or the Ruling Principles. For the reasons set out in response to question 2 below, the Regulations -
- 24.1. do not contain anything that is inconsistent with sections 1 to 3 of the Constitution;

⁷ *Report of the Appellate Tribunal: Reference on Women Bishops* 26 September 2007 reasons of Mason J at [66]

⁸ See section 51 of the Constitution and the reasons of the President (at page 20) Deputy President in *Report and Opinion of the Appellate Tribunal on Two References in 1990 relating to the ordination of women* 28 November 1991

⁹ *Opinion of the Appellate Tribunal on two references in 1990 relating to the ordination of women* 28 November 1991, reasons of the President at page 7

24.2. do not deal with any principle of doctrine or worship such that they might contravene the Ruling Principles; and

24.3. are accordingly not contrary to or a departure from the doctrine of the Church.

Question 2 – the source of power

25. If question 2 is directed to whether Wangaratta had power under the *Canon Concerning Services* to pass the Regulations, question 2 also fails to identify a matter arising under the Constitution.

26. However, for the avoidance of doubt, Wangaratta plainly did have that power. The power exercised by the Wangaratta Synod to make the Regulation was derived from the *Canon Concerning Services*:

27. The Regulations do not purport to make an alteration to ritual or ceremonial and accordingly they do not transgress section 71(2) of the Constitution. They are a valid exercise of Wangaratta's power to make ordinances for the order and good government of the diocese and to make regulations as contemplated by section 5(2) of the *Canon Concerning Services*.

The meaning of 'doctrine'

28. If question 2 is directed to whether the substance of the Regulations comply with the requirements of the *Canon Concerning Services* then this calls for consideration of the meaning of doctrine as defined in the Constitution.

29. Section 74(1) of the Constitution defines **doctrine** as meaning "the teaching of this Church on any question of faith".¹⁰ Whilst other subjects of the Church's teaching will include questions of ritual, worship, ceremonial and discipline, none of those teachings are **doctrine** for the purposes of the Constitution.

30. As the definition of doctrine in the Constitution applies to Canons made by General Synod¹¹, it follows that only teaching on questions of faith will be doctrine for the purposes of section 5(3) of the *Canon Concerning Services*.

31. This definition of doctrine makes it necessary to consider the definition of faith in section 74(1) of the Constitution:

¹⁰ Section 74(1) says "unless the context or subject matter otherwise indicates" and indeed the context and subject matter of section 4 suggest that the initial references to doctrine in that section should not be understood as being references to the Anglican Church's teaching on questions of faith but to the statements it has inherited from the Church of England. See the reasons of Tadjell JA and of Young J (as he then was) in *Report of the Appellate Tribunal Opinion on the Ordination of Women to the Office of Deacon Canon 1985* 4 March 1987

¹¹ *Interpretation Canon 1995*, section 4

Faith includes the obligation to hold the faith.

32. As "breach of faith" is a ground on which a charge may be brought against a bishop or any other person on holy orders¹², the term must be capable of a clear definition for constitutional purposes. Section 74(4) provides that references in the Constitution (though not in Canons) to faith "shall extend to doctrine". This appears to ensure that charges of breach of faith can include breaches of doctrine, but this circular definition is of no assistance in divining the precise meaning of **faith** for the purposes of the definition of **doctrine**.
33. The learned author of *Canon Law in the Anglican Communion*, having noted the exceptional situation of Australia in having any sort of formal definition of the term doctrine, notes that:
- Doctrine... may be understood in a general sense as that body of faith or teaching which is received and believed by those comprising a religious community. The legal treatment of discrete subjects associated with belief suggests that doctrinal law in Anglican churches has four basic functions: to ensure the public presentation of the faith; to define and to protect the faith; to empower the church to develop and reformulate the faith; and to enable a degree of doctrinal discipline.¹³
34. Faith and doctrine are thus related and can be understood to exist in a hierarchical relationship where faith is higher than doctrine, because the subject and purpose of doctrine is faith.
35. 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.¹⁴
36. The history of the development of what became the Constitution includes the "Red Book" controversy in which proceedings were taken in the civil courts in NSW in the 1940s to restrain the use of a service booklet which had been authorised by the Bishop of Bathurst and which included prayers, occasional offices and a service for the Holy Eucharist which differed from the forms in the BCP. It was argued by those bringing the proceeding that the changes were not permitted as a matter of canon and civil law. The ultimate outcome of the case in the High Court in 1948¹⁵ was that

¹² See sections 54, 55 and 56 of the Constitution

¹³ Norman Doe *Canon Law in the Anglican Communion*, Clarendon Press Oxford, at page 187-188

¹⁴ *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, at page 7

¹⁵ *Wylde v Attorney-General (NSW)* (1948) 78 CLR 224

use of the service booklet was forbidden¹⁶ but considerable concern was expressed within the Church regarding the implications of a bishop having no authority in their own diocese to authorise or permit departures from the BCP, especially since the evidence was that such departures were common both in the United Kingdom and in Australian dioceses.¹⁷

37. A review of the history of the Constitutional Committee's drafts of what became the Constitution reveals that, whilst every draft from 1926 to 1946 had included the BCP and the 39 Articles in Chapter I, the 1951 draft (that is, the draft prepared and circulated in the years following the conclusion of the Red Book case) moved those references to Chapter II.
38. A review of debates at the subsequent general synod in 1955 and in the subsequent diocesan synods confirm that it was understood that there were many areas of dispute amongst and within dioceses and that the Constitution represented an attempt to create a national body that could accommodate those disputes since they could not possibly be resolved. Part of the compromise made on all sides was a compromise on the status of the BCP and 39 Articles in the Constitution.¹⁸
39. As the Appellate Tribunal noted in 2010:

The Anglican Church is so structured that despite wide ranging views on a number of matters, all its members should be able to worship together in accordance with the rules of the church.¹⁹
40. In other words, the Constitution was crafted in the context of deep divisions within the Church on a range of theological and liturgical matters, including as to the very nature of Anglicanism. It was 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. This history and context informs what is meant by "faith" and by extension what is meant by "doctrine" for constitutional purposes.
41. In considering the meaning of faith and doctrine it is also relevant to note that section 54 of the Constitution provides for charges to be brought in respect of (relevantly)

¹⁶ The ruling (an evenly divided Court in which the Chief Justice therefore had a casting vote) was on the basis of the use of the book being a breach of the trusts on which Church property was held. The reasoning of the minority, particularly Dixon J as he then was, is likely to be more persuasive now: see the reasons of the President in *In the matter of two references to the Appellate Tribunal in 1990 relating to the ordination of women* 28 November 1991 at page 5

¹⁷ See the review of the available material in Chapter 5 John Davis's book *Australian Anglicans and their Constitution* (1993) Acorn Press (Davis)

¹⁸ See discussion in *Report of the Appellate Tribunal Opinion on the Ordination of Women to the Office of Deacon Canon 1985* 4 March 1987: reasons of the Archbishop of Adelaide at page 50

¹⁹ *Opinion of the Appellate Tribunal on the reference on the Legality of the Administration of Holy Communion by Deacons or Laypersons* 10 August 2010 at [21]

breach of faith against clergy or bishops. Given the history of the Constitution and the wide range of views held within the Church, it cannot have been the intention of those adopting the Constitution that matters in respect of which there were long-held divergences of view could form the basis of charges brought by holders of one view against the holders of another view. This had been the precise context of the Red Book case. It is much more consistent with the history and context of the Constitution that faith (and therefore doctrine) had a meaning confined to matters contained in the Fundamental Declarations from which no departure or divergence was permitted. For instance, belief in the Holy Trinity, the continued administration of the sacraments, the maintenance of the three orders of ministry and the Old and New Testaments containing all things necessary for salvation.

42. The Appellate Tribunal has previously considered the question of the scope of the term 'doctrine' in the context of its series of opinions between 1980 and 1987 all of which concluded by majority that there was no doctrine preventing the ordination of women. Handley QC (as he then was) said:

While questions of doctrine, in the ordinary sense of the word, were central to the issues debated before us, doctrine is defined in Section 74(1) of the Constitution as meaning the teaching of this Church on any question of faith. The definition of faith in Section 74(1) is not at all helpful but the sense in which the word is used in the Constitution appears from Section 1. This refers to the Christian faith as professed by the Church of Christ from primitive times and in particular as set forth in the creeds.

Notwithstanding the importance of the issues before us, the strongly held views on all sides, and the fundamental nature of the theological and biblical arguments which have been raised, in my opinion the questions involved are not part of the Christian faith professed by the Church, they are not dealt with in the Creeds, and do not directly involve matters necessary for salvation. This question before us therefore does not involve any principle of "doctrine" as that expression is used in the Constitution.²⁰

43. In the same decision, Young J said -

..[I]t is necessary to disgress and consider the definition of "doctrine" in s74(1) of the Constitution. The word is defined as meaning "The teaching of this Church on any question of faith". "Faith" is then defined as including "the obligation to hold the faith". The word is used in contradistinction to "discipline" which is said to include "the rules of this Church and the rules of good conduct".²¹ The definitions are not completely in point because "this Church" means "the autocephalous Anglican Church of Australia" whereas in section 4 the doctrine of the Church is the doctrine of the Church of England in England as at 1955. Nevertheless, s 74 seems to me to make a

²⁰ *Report of the Appellate Tribunal Opinion on the Ordination of Women to the Office of Deacon Canon 1985* 4 March 1987: reasons of Handley QC at page 115-116

²¹ Note that the definition of discipline has since been altered by constitutional amendment and is now contained in section 74(9) but the distinction between doctrine and discipline still exists

very definition division between the rules of order and conduct on the one hand, and the teaching of the Church on matters of faith on the other.²²

44. The history of the Constitution supports this conclusion previously reached by the Appellate Tribunal that references to **faith** in the Constitution are to be understood as references as to those matters about which there was and is no dispute. That is, the matters contained in the Fundamental Declarations. Chapter I contains the fundamental truths of the Apostolic Faith while Chapter II, including section 4, represents the particular Anglican development of those truths.²³

45. The meaning of the phrase “principle of doctrine or worship” was usefully summarised in an extract from a report from the Bishops to the Appellate Tribunal in the *Ordination of Women to the Office of Deacon* reference in 1985²⁴:

The first thing to be said is that a ‘principle of doctrine or worship’ is to be distinguished from a moral or behavioural principle or rule of conduct or discipline. A moral behavioural principle is a statement of universal hypothetical form such as: ‘Whenever you are in a situation of kind X you should behave in way Y’. A principle of doctrine or worship is a fundamental axiom of faith (expressed propositionally or doxologically) which may form the basis of a deductive argument whereby further doctrinal or doxological statements may be articulated. It is precisely such basic principles of doctrine or worship which govern the revision or alteration of forms of worship or behavioural rules of discipline.

46. In other words, while principles of doctrine may inform or underpin rules of conduct and discipline, those rules of conduct and discipline will not have the same status as the doctrine of faith from which they take their inspiration. This distinction between doctrine and discipline is “a familiar one in Anglican teaching.”²⁵

47. ‘Faith’ for the purposes of the definition of doctrine in the Constitution and in the *Canon Concerning Services* means the “Christian Faith as professed by the Church of Christ from primitive times” referred to in section 1 and as understood in the context of sections 2 and 3.²⁶ It means the matters contained in the Fundamental Declarations about which there is no dispute and to which there can, by virtue of

²² *Report of the Appellate Tribunal Opinion on the Ordination of Women to the Office of Deacon Canon 1985* 4 March 1987: reasons of Young J at page 108

²³ See for instance *Opinion of the Appellate Tribunal concerning diaconal and lay presidency* 7 May 1996 (decision of Bleby J)

²⁴ At page 109 in the reasons of Young J

²⁵ *Report of the Appellate Tribunal Opinion on the Ordination of Women to the Office of Deacon Canon 1985* 4 March 1987: reasons of the President at page 33

²⁶ See the reasons of Tadgell JA in *Opinion of the Appellate Tribunal Concerning Diaconal and Lay Presidency* 7 March 1996 and His Honour’s comments on the need to read sections 1, 2 and 3 together.

section 66 of the Constitution, be no change. The faith of the Church, about which it teaches, is the faith in sections 1, 2 and 3.

48. It may also be noted that this view of what constitutes faith and doctrine is also expressed in the BCP Catechism which sets out, together with the Creeds, the Lord's Prayer, and the Ten Commandments, the matters about which a child being brought to be confirmed should be instructed. The Catechism contains the doctrine which must be known before being received as a communicating member of the Church. It reflects the matters in the Fundamental Declarations. It says nothing of marriage.
49. Section 26 of the Constitution permits the General Synod to make statements about the faith of the Church but also provides for it to declare its views on matters affecting spiritual, moral or social welfare. The General Synod has seen fit to do so on many matters of public and moral controversy, including on the question of marriage and same sex relationships, and the views so expressed were doubtless grounded in the General Synod's understanding of what the faith of the Church is. But it does not follow that those statements are doctrine for the purposes of the Constitution or the *Canon Concerning Services* merely because they were faith-based.
50. The teaching of the Church on any topic will thus only be doctrine for the purposes of the *Canon Concerning Services* if it is teaching about the faith of the Church as contained in sections 1, 2 and 3 of the Constitution.
51. To the extent that the 39 Articles and the BCP contain teaching on questions of the faith of the Church, they contain doctrine.
 - 51.1. A substantial number of the Articles do indeed teach on matters of faith, while some are better characterised as relating to ceremonial or discipline: see for example Article 37 on the power of civil magistrates and Article 38 which is about godly living.
 - 51.2. The liturgies in the BCP include the Creeds and the Catechism which represent part of the Fundamental Declarations and which are doctrine. They also contain ritual and ceremonial, and, to the extent that they set limits on when and how certain rites may be used, they represent teaching on discipline.
52. Because the *Canon Concerning Services* limits the potential for the use of forms of service to forms that are not contrary to or a departure from the doctrine of the Church, question 2 (if construed as being directed to the substance of the Regulations rather than their form) requires the Tribunal to consider whether there is any doctrine

with which the Regulations might be inconsistent. What is the Church's teaching on marriage and on blessings, and is that teaching on a question of faith?

The Church's teaching on marriage

53. The Church's teaching on marriage is to be found in its forms of service for marriage, most particularly in the BCP, and in the three Canons of General Synod dealing with the question of matrimony. It can also be found in codes of conduct such as *Faithfulness in Service* which contain advice or directives about sex and intimacy within marriage. None of the 39 Articles deal expressly with marriage.
54. The BCP marriage service is expressly confined to marriage between a man and a woman. There is no authorised Anglican rite for any form of Christian marriage other than a marriage between a man and a woman. The General Synod, in exercising its powers under section 26 of the Constitution, has expressed the view that marriage is between a man and a woman.
55. There are 3 Canons of General Synod that relate to marriage.
 - 55.1. All three are confined to Christian marriage, that is to, marriages being solemnised using the rites and ceremonial of the Anglican church;
 - 55.2. All three deal with matters of discipline and ritual and do not contain any reference to faith. They relate to how and when the marriage rites of the church may be used, and to who may participate in those rites, including divorced persons.
56. Taken all together, and having regard to past statements of the Tribunal on the distinction between doctrine and other forms of Church teaching on matters of ritual, ceremonial and discipline, the Church's teaching on marriage does not have the status of doctrine as that term is defined in the Constitution. It is not referred to in the Fundamental Declarations. It is not the subject of any teaching in the 39 Articles. The BCP and the Canons of General Synod deal with marriage as a rite of the Church and as matter relating to ceremonial and discipline. Codes of Conduct such as *Faithfulness in Service* deal with marriage as part of guidance about godly living and conduct.
57. A argument might be made that the BCP marriage service does expressly prohibit relationships other than Christian marriage because of the words in the service "so many as are coupled together otherwise than God's Word doth allow are not joined together by God; neither is their Matrimony lawful". The argument is that those words represent a statement which excludes any form of relationship other than Christian marriage between a man and a woman as being a relationship capable of sanctioned by God.

58. This argument still requires consideration of whether any such prohibition, if it exists, represents the teaching of the Church on a *question of faith* rather than of ritual or ceremonial, or whether it merely reflects matters of tradition or secular law. It is important to consider the context in which the liturgies and formularies in the BCP were created. As was noted by Vice President Tadgell JA in the context of debate on whether women could be ordained to any of the orders of ministry :

The social and constitutional milieu in which the Book of Common Prayer was produced required that its compilers proceed upon the footing that women were ineligible for ordination. No-one doubts that they were ineligible both by the common law and by the canon law, for by neither the common law from its commencement nor the Constitution of England was a woman entitled to exercise any public function...What Lord Haldane in Viscountess Rhondda's Claim [1922] 2 AC 339, 387 called "the general disability which the law regarded as attaching to the exercise by women of public functions" cannot be supposed to have depended upon the canon law or any religious doctrine or religious principle, for it extended much beyond the Church in its application. Inasmuch as the common law exclusion of women overlapped the religious exclusion, I should be unwilling to ascribe to any position adopted or enshrined or embodied or laid down in the Ordinal the character of a principle of doctrine or worship unless there were other evidence to justify it being treated as such.²⁷

59. Whether dealing (as this reference does not) with a form of service purporting to solemnise a marriage according to Christian rites, or whether (as here) with a form of blessing only, the Tribunal can adopt this reasoning with respect to the blessing of civil marriages, including same sex marriages: to the extent that the BCP marriage rite provides for only marriages between men and women, that can be seen as reflecting the reality of the common law position and attitudes extending well beyond the Church rather than being derived from any doctrine. At the time the BCP was prepared, there was no possibility of same sex marriages, and no "civil marriage" in the sense of ceremonies conducted other than by priests. Just as the historical absence of women as clergy does not represent a doctrinal principle that women cannot be ordained, so too the historical absence of civilly conducted marriages or forms of rite for same sex marriages does not arise from a point of doctrine but from past social attitudes and legal constraints unrelated to, if overlapping with, the rituals and discipline of the Church.
60. So too, the words "*so many as are coupled together otherwise than God's word doth allow are not joined together by God*" in the BCP marriage service must be seen in the context of their place in the service. That context is the section dealing whether there are any impediments at law to the marriage. The reference to "other than God's

²⁷ See *Report of the Appellate Tribunal Opinion on the Ordination of Women to the Office of Deacon Canon 1985* 4 March 1987: reasons of the Vice President at page 90

word doth allow" is a reference to circumstances in which marriage was prohibited by both civil and canon law – such as cases where one party was already married or where the parties stood in a prohibited relationship to each other.

61. Even if this teaching is construed as doctrine, it is still necessary to consider the implications of that doctrine for how the Church is to regard other forms of relationship, such as civil marriages. If the Church's position on marriage is one of faith and not of ritual, ceremonial or discipline, then by necessary implication it is a position confined to Anglicans. It is teaching governing the practice of the central tenets of the Anglican faith. It cannot then purport to cover the field with regard to civil law or be a universal statement about the morality of other kinds of relationships.
62. The Appellate Tribunal has previously found that a canon providing for the marriage of divorced persons, regardless of the cause of the breakdown of the marriage, would not contravene either the Fundamental Declarations or the Ruling Principles.²⁸ This would indicate that the teaching of the Church on marriage as contained in the BCP, at least insofar as it relates to the principle of "to the exclusion of all others for life" is not the teaching of the Church on a question of faith and therefore not doctrine for the purposes of section 4 of the Constitution.
63. Accordingly the BCP marriage service does not speak to the question of whether persons in a civil marriage may be blessed by the Church. The marriage service does reflect the Church's teaching on what constitutes a Christian marriage but, even if that teaching is **doctrine** for the purposes of section 4 (which the Tribunal should find it is not) it does not represent a binding statement of whether persons in other kinds of relationship can be blessed or otherwise regarded as worthy of God's favour.

Scripture

64. It can be readily acknowledged that there is a body of opinion that would consider the blessing of same sex civil 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 phrases²⁹, 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

²⁸ *Opinion of the Appellate Tribunal on the Marriage of Divorced Persons and admission of women to Holy Orders* 8 February 1980,

²⁹ A similar argument from certain texts was made in the context of the ordination of women and rejected in the light of biblical scholarship: see the reasons of the majority in *Opinion of the Appellate Tribunal on the Ordination of Women* August 1985.

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.
- 65.1. 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 which confronts the Tribunal.³⁰
- 65.2. The existence of different biblical commentaries on disputed passages indicates that there are many different views on parts of Scripture.³¹
- 65.3. While the interpretation of Scripture does not change with every whim and win, the Tribunal ought not ignore 150 years of biblical critical scholarship and its results, nor 300 years scientific investigation and discovery.³²
- 65.4. Differences of interpretation sometimes result from differences in detailed exegesis, sometimes from the application of differing hermeneutical principles. "While the Constitution binds the Church to holy scripture as the ultimate rule and standard of faith, and while the 39 Articles make important statements about the place of Holy Scripture in the Church, the Church has not bound itself to one particular set of principles in the interpretation of Scripture".³³
66. Such texts as exist on the topic of marriage, sexual relationships and same sex relationships are the subject of profound and continuing debates amongst scholars and form the basis for widely diverging views amongst Anglican clergy and laity. The Tribunal is not equipped to resolve that debate. Indeed, the very existence of that debate is itself evidence that questions of marriage and personal relationships are questions which are not questions about the faith as contained in the Fundamental

³⁰ *Report of the Appellate Tribunal Opinion on the Ordination of Women to the Office of Deacon Canon 1985* 4 March 1987: reasons of the Vice President at page 80-81

³¹ *Report of the Appellate Tribunal Opinion on the Ordination of Women to the Office of Deacon Canon 1985* 4 March 1987: reasons of Mr Justice Young at page 98 where His Honour notes there are "as many different views on parts of Scripture as there are views about the meaning of section 92 of the Australian Constitution"

³² *Report of the Appellate Tribunal Opinion on the Ordination of Women to the Office of Deacon Canon 1985* 4 March 1987: reasons of the Bishop of Newcastle at page 69

³³ *Report of the Appellate Tribunal Opinion on the Ordination of Women to the Office of Deacon Canon 1985* 4 March 1987: reasons of the Archbishop of Adelaide at page 43

Declarations. They are matters about which faithful Anglican people of good conscience can differ. They are not of the same order as matters relating to the faith of the Church as held from ancient times. Strong views may be held on either side of the debate without either side ceasing to uphold that Christian faith as it is reflected in the Creeds and in the 39 Articles and BCP. This is amply evidenced by the variety of arguments and views expressed in the Doctrine Commission's essays in *Marriage, Same Sex Marriage and the Anglican Church of Australia*, as well as in the contents of debates within and between dioceses and other church organisations.

67. Accordingly, any argument about the content of the Church's teaching which is based on disputed interpretations of Scripture cannot meet the definition of doctrine under the Constitution. Anglicans are able to hold divergent views on many matters and still be Anglicans. Individual consciences may regard the teachings of the Scripture as leading to differing conclusions on matters of personal behaviour and morality. The fact that those differing views are faith-informed and held with great sincerity cannot convert matters of ritual or discipline or moral or social welfare³⁴ into matters of doctrine.

Blessings

68. As set out in the attached essay from Revd Canon Professor Dorothy Lee, blessings are at the heart of the common life of Anglicans.
69. The Regulations adopt a form of service for blessing people who have been married in a civil ceremony. There is no doctrine contained in the 39 Articles that limit the circumstances in which a blessing may be given to a person. The prayers upon diverse occasions in the BCP and other authorised prayer books do not purport to cover the field such that blessings or prayers in other contexts are not permitted. Whilst not all Anglican traditions favour the use of blessings to the same extent, there are well established practices in many parts of the Church which bless people, pets, meetings, buildings and personal endeavours.
70. Accordingly, nothing in the doctrine of the Church prevents the offering of a blessing to persons who seek that blessing in the context of their having been party to a civil marriage.

Conclusion

71. The result of this analysis is that

71.1. The Church's teaching on marriage is not doctrine;

³⁴ Section 26 of the Constitution empowers the General Synod to declare its view on many matters including matters of spiritual, moral and social welfare. Resolutions from General Synod made in exercise of that power are not doctrine.

71.2. If it is, it is confined in its scope to what constitutes a Christian marriage, and not to whether people in other kinds of relationships are worthy of God's blessing;

71.3. In either case, the Regulations and the form of service they adopt are not contrary to or a departure from doctrine; and

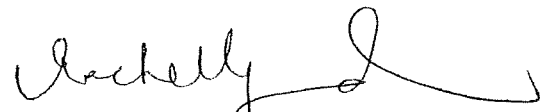
71.4. Accordingly, they are validly made under the *Canon Concerning Services*.

72. The questions should be answered as follows:

Question 1 – unnecessary to answer, but if answered, yes.

Question 2 – yes.

8 November 2019



.....
RACHEL ELLYARD
Advocate for the Diocese of Wangaratta

For him, through him, by him.....

Marriage definition "the legal union of a man with a woman, religious ceremony that sanctions the decision of a man and a woman, to live as husband and wife. This is clearly seen both in religious context being the bible and, in our dictionary, and has defined us since the beginning of time.

Marriage has and will always remain sacred and a bond between a man and woman. So why are we even considering redefining this sacred and powerful union, with the thought of changing and allowing same sex couples to marry. I feel that this is a very important question that needs to be addressed. I believe that the people that are looking to be married as same sex couples, if they really loved God and give their lives to him, then they would never even out of respect and glory for him be asking such a thing. Same sex couples should not expect marriage to be redefined or changed, but instead change needs to begin within themselves, if they truly love God and wish to live with his blessing. This is the case with every human that God has created we all sin and continually fall short of his glory. No one said it would be easy living God's way in fact if it is easy then we are doing it wrong. We are the one's that need to change, and we all need God's help to do this. He is the only one who can save us, but we must live a life that is righteous and true to the bible.

We need not to succumb to the pressures and darkness of this world. We must stand firm in our religious beliefs and be united and stand with God. Don't be tempted to alter our identity by sacrificing our morals and beliefs to fit in with our everchanging world. It's either right or wrong there is no in between. In this instance same sex marriage is so wrong on many levels and if allowed the repercussions to follow will be enormous. Our world is changing all the time, for the better or for the worse some might argue, but for me the Bible continues, and I hope, and prayer will always represent our firm beliefs and convictions. Don't change the bible to suit our ever-changing generation or succumb to the pressure from people wanting to push the limits. I ask that you stand firm in the conviction of marriage and that it remains uniting of a man and a woman. If they wish to be united, then it needs to be done under different terms and not included in the doctrine defined as marriage.

We all live by standards and our morals, if as Christians we are seen to be changing these rules to suit our situation what message is this sending to non-believers and our very own children. Let us not let our religion along with our attributes, the very thing that defines us become so blurred we no longer know the difference between right or wrong.

This decision is simple, but we seem to be blinded again and again by the darkness. Let's keep our eyes wide open and keep heading towards our light "God". Always remembering where there is darkness the light is always what guides us. Let's keep our eyes on God being both gracious and humble excepting of people but always staying true to God's word.

Out of my love for our awesome God I encourage you and us all to stand firm and strong remembering always our Saviour Jesus Christ as he is indeed the reason.

Sometimes it is about more than what we are told but more about what we feel. I will always listen to my heart and I hope and prayer that you listen and follow yours.

Sharon Scaddan

To.

Registrar Appellate Tribunal,

Anglican Church of Australia.

Question: 1. Whether the regulation ***Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019*** made by the Synod of the Diocese of Wangaratta is consistent with the Fundamental Declaration and Ruling Principles in the Constitution of the Anglican Church of Australia.

The acceptance of the regulation bypasses an open debate within the Church about the acceptance of same sex marriage to the Anglican Community and gives authority to registered celebrants who are also members of the clergy to openly bless marriages of homosexual couples thereby giving tacit approval to the practice of homosexuality and same sex marriage.

1. If the Church permits the unqualified Blessing of persons married according to the Marriage Act 1961: Regulations 2019 it will conflict with Part 1. - Chapter 1. – Fundamental Declarations and Chapter II – Ruling Principles of the Church constitution.

The Apostles Creed calls to the Christian to state a belief in the Communion of Saints but the issue of same sex marriage set before the Church is divisive and harmful both to the Australian Church but also to the communion of believers across the globe as there are many Christian Churches, members of the Anglican Communion, who do not accept same sex marriages as a Christian practice and therefore will find it hard to fellowship with Australian Anglicans and will possibly severe fellowship.

The Canonical Scriptures as the ultimate rule and standard of faith are unquestionably opposed to the practice of homosexuality. Judges 19 and Romans 1 are clearly opposed and there is no need to quote a host of other passages that can be added to these passages. In consequence there is no instance of marriage between same sex couples recorded in the scripture. Remarkably there is very little written in the scriptures about the sin of sodomy comparative to idolatry and adultery. It does not seem to have been a social issue in biblical times. Ancient Hebrew society eschewed such behaviour.

As the Regulation of the Diocese of Wangaratta is contrary to the teaching of scripture it conflicts with the Fundamental Declarations of the Church and is inconsistent with the doctrine of the Church. It is contrary to the constitution.

Question: 2. Whether the regulation is validly made pursuant to the ***Canon Concerning Services 1992.***

The Ruling Principles stated in the Church constitution declare that ***the Book of Common Prayer (BCP.) together with the Thirty nine Articles be regarded as the authorised standard of worship and doctrine in the Church and no alteration in or permitted variation from the services or Articles therein contained shall contravene any principle of doctrine or worship laid down in such standard.***

The Form of Solemnization of Matrimony in the BCP clearly caters for a union between a man and a woman. The form of blessing starts with the words: *Dearly beloved, 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.....*

The BCP states one purpose of the marriage is for procreation.

The solemnization is stated firstly to a man and then to a woman, there is no provision for addressing two people of the same sex. *Who giveth this woman to be married to this man?* This question is a clear indication of a marriage between a man and woman.

The reading: Psalm 128, centres on a traditional marriage between a man and woman with a resultant family.

The Homily (18) in Article XXXV of the Articles relates to a relationship in marriage between a man and woman.

The Wangaratta Diocese alternate **Service of Blessing for persons who have been married according to the Marriage Act 1961** omits these important passages listed above and in consequence changes the doctrine and spirit of the Marriage service. This change is inconsistent with **Canon Concerning Services 1992** para 5, subsection (1) and (3).

- (1) and (3). (1) States that the Minister may make and use variations which are **not of substantial importance** but the omission of the stated intent of the BCP Solemnization of marriage between a man and woman in the **Service of Blessing** completely changes the purpose of the service. It is a **substantial** omission. It is a change to the doctrine of this Church and in conflict with the position taken in the Holy Scriptures and also to subsection (3) which states **All variation..... must not be contrary to or a departure from the doctrine of the Church.**

Although subsection (4) makes provision for the bishop of the diocese to determine if the variations conform to the doctrine of the Church it appears that in this instance the Primate has reservations about this determination and is right to appeal it.

Most of the Book of Common Prayer of 1662 was sourced from the work of the evangelical Archbishop, Thomas Cranmer's prayer book of 1552. The canon law in the time that Cranmer served in the Church forbade marriage for all priests and yet he married twice. He followed the teaching of scripture rather than the recognised thinking of his times which favoured celibacy within the Church. It may have been during these years that he compiled the BCP Marriage Service. Thomas Cranmer rejected the erroneous teachings of his day and lived his life in the light of Christ and his Word. He was martyred in March 1553.

Like the canon law in the time of Thomas Cranmer, the laws of a modern Liberal Democracy often conflict with the ethics and values of the Christian Church. The blessing of same sex marriages by the Anglican Church conflicts with the scripture, the BCP, the Thirty- Nine Articles of religion and the constitution of the Anglican Church of Australia. The Church will probably be subjected to criticism if it rejects the blessing of civil marriages unconditionally but historically Christian ethics have never been identical to social laws and have often borne criticism.

The BCP marriage ceremony has never historically been intended to serve the homosexual communities of society. Any attempt to recognise Christian acceptance of same sex marriage within the Anglican Church will require a substantial revision of the doctrine of the Church. To introduce that revision surreptitiously is a departure from the Christian norm which has always used councils to determine orthodox doctrine.

Question: **3. Whether, in light of the determination to be made in Questions 1 & 2, the Regulations are validly made pursuant to the Canon Concerning Services 1992.**

If the Appellate Tribunal finds in favour of 1 and 2 stated above then the corollary is the invalidity of the **Blessing of Persons Married according to the Marriage Act Regulations 2019** on the grounds that the Regulations are in conflict with the Fundamental Declaration and Ruling Principles in the Constitution of the Anglican Church and harmful to the Communion of Saints.

The Appellate Tribunal must then find that the Regulations are inconsistent with the Canon Concerning Services 1992 para 5, subsection (1) and (3) and the Regulation should therefore be withdrawn or disallowed or both.

Alan Perrie.

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16/11/2019.

I am writing to appeal against any decision that the Anglican Church of Australia may make in allowing ministers to provide a blessing for the marriages between two people of the same sex.

We cannot provide a blessing for something that is going against God's word. If we do then we will change the church forever and make a drastic effect for all churchgoers. Even though the government may have made the decision to allow it, it is against God's word. God is the ultimate power.

In Romans it says it quite clearly

Romans 1:21-27 ²¹For although they knew God, they neither glorified him as God nor gave thanks to him, but their thinking became futile and their foolish hearts were darkened. ²²Although they claimed to be wise, they became fools ²³and exchanged the glory of the immortal God for images made to look like a mortal human being and birds and animals and reptiles. ²⁴**Therefore God gave them over in the sinful desires of their hearts to sexual impurity for the degrading of their bodies with one another.** ²⁵**They exchanged the truth about God for a lie, and worshiped and served created things rather than the Creator-who is forever praised. Amen.** ²⁶**Because of this, God gave them over to shameful lusts. Even their women exchanged natural sexual relations for unnatural ones.** ²⁷**In the same way the men also abandoned natural relations with women and were inflamed with lust for one another. Men committed shameful acts with other men, and received in themselves the due penalty for their error.**

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This is not said with hate but with love. Jesus has said that God would love to have everyone go to eternal life in heaven rather than hell. But if they continue to sin and do not accept Jesus as their leader and the person who gave up his life for them, then they will go to hell. This means that all of us have to look at our beliefs and our relationship with God

- "I struggle with same-sex attractions, but when I struggle I look to the cross and see Jesus hanging there it makes me want to fight. If

Jesus sacrificed His life for me to go to Heaven, then I can sacrifice this sinful lifestyle for Him.”

- “God’s judgment on homosexual and lesbian relationships is not because he is a killjoy, but because he is opposed to what kills joy.” John Piper”

<https://biblereasons.com/homosexuality/> above quotes from here.

Revelations 1:26 +

26For this reason God gave them over to dishonourable passions. Even their women exchanged natural relations for unnatural ones. **27**Likewise, the men abandoned natural relations with women and burned with lust for one another. Men committed indecent acts with other men, and received in themselves the due penalty for their error. **28**Furthermore, since they did not see fit to acknowledge God, He gave them up to a depraved mind, to do what ought not to be done....

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Cross References

Leviticus **18:22**

You must not lie with a man as with a woman; that is an abomination.

Leviticus **20:13**

If a man lies with a man as with a woman, they have both committed an abomination. They must surely be put to death; their blood is upon them.

1 **Corinthians** **6:9**

Do you not know that the wicked will not inherit the kingdom of God? Do not be deceived: Neither the sexually immoral, nor idolaters, nor adulterers, nor men who submit to or perform homosexual acts,

Jude **1:7**

In like manner, Sodom and Gomorrah and the cities around them, who indulged in sexual immorality and pursued strange flesh, are on display as an example of those who sustain the punishment of eternal fire.

Treasury of Scripture

And likewise also the men, leaving the natural use of the woman, burned in their lust one toward another; men with men working that which is unseemly, and receiving in themselves that recompense of their error which was meet.

Romans **1:23,24**

And changed the glory of the uncorruptible God into an image made like to corruptible man, and to birds, and four footed beasts, and creeping things...

Basically if the Anglican Church allows gay and lesbian marriages to be blessed in the Anglican Church then a barrier is being established between God and the church. This barrier will affect every parishioner and priest in the church whether they believe it or not.

This barrier means that the way to eternal heaven is cut off and members of the Anglican Church will not be able to get into heaven due to the actions of its leaders. If they fight the issue and stop it, then I believe that God will bless the church and all parishioners will be able to get to heaven if they do not support the concept of "shameful acts" and declare Jesus as Lord and Saviour. .

The comment by a person struggling with homosexuality was good in that we as a church need to pray for the work of the Holy Spirit to assist them to understand how the devil is influencing them and to ask for the help of the Holy Spirit to defeat the work of the devil.

Revelations 22:17-19 is a final verse to be considered –

17The Spirit and the bride say, "Come!" Let the one who hears say, "Come!" And let the one who is thirsty come, and the one who desires the water of life drink freely. **18**[testify to everyone who hears the words of prophecy in this book: If anyone adds to them, God will add to him the plagues described in this book.](#) **19**And if anyone takes away from the words of this book of prophecy, God will take away his share in the tree of life and in the holy city, which are described in this book....

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If we are going to continue as God's church we must stop this action and also look at who is practicing this action as preachers or members in our church. We need to pray for them.

Pamela McHardy

PO Box 3001

Maryborough Q 4650

TO THE APPELLATE TRIBUNAL ANGLICAN CHURCH OF AUSTRALIA

GENERAL SYNOD

RESPONSE by the Right Reverend Dr. Peter Brain (a member of the Anglican Church of Australia since Confirmation in 1961; an ordained Deacon (1975), Priest (1975, parish minister (1975-1999; 2012-2017) and former Bishop of Armidale (2000-2012) and continuing to be active in parish work and life.

I SUBMIT that the answer to both Questions 1 and 2 asked by the Primate on 21/10/19 in the matter of "Blessing of persons married according to the Marriage Act 1961 Regulations 2019 (Wangaratta)" be "NO" for the FOLLOWING REASONS, set out below for your consideration.

1. OUR CONSTITUTION ACT 1961 states: DECLARES:

Chapter 1 1. *The Anglican Church of Australia, being a part of the One Holy Catholic and Apostolic Church of Christ, holds the Christian Faith as professed by the Church of Christ from primitive times and in particular as set forth in the creeds known as the Nicene Creed and the Apostles' Creed.*

2. This 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.

3. This Church will ever obey the commands of Christ, teach His doctrine, administer His sacraments of Holy Baptism and Holy Communion, follow and uphold His discipline and preserve the three orders of bishops, priests and deacons in the sacred ministry.

RULING PRINCIPLES (RP) Chapter 2

4. *This Church, being derived from the Church of England, **retains and approves the doctrine and principles of the Church of England embodied in the Book of Common Prayer together with the Form and Manner of Making Ordaining and Consecrating of Bishops, Priests and Deacons and in the Articles of Religion sometimes called the Thirty-nine Articles** but has plenary authority at its own discretion to make statements as to the faith ritual ceremonial or discipline of this Church and to order its forms of worship and rules of discipline and to alter or revise such statements, forms and rules, **provided that all such statements, forms, rules or alteration or revision thereof are consistent with the Fundamental Declarations contained herein and are made as prescribed by this Constitution.** Provided, and it is hereby further declared, that the above-named Book of Common Prayer, together with the Thirtynine Articles, be regarded as the authorised standard of worship and doctrine in this Church, **and 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.** **Provided** further that until other order be taken by canon made in accordance with this Constitution, a bishop of a diocese may, at his discretion, permit such deviations from the existing order of service, not contravening any principle of doctrine or worship as aforesaid, as shall be submitted to him by the incumbent and churchwardens of a parish. Provided also that no such request shall be preferred to the bishop of a diocese until the incumbent and a majority of the parishioners present and voting at a meeting of parishioners, duly convened for the purpose, shall signify assent to such proposed deviations. Such meeting shall be duly convened by writing, placed in a prominent position at each entrance to the church and by announcement at the morning and evening services, or at the service if only one, at least two Sundays before such meeting, stating the time and place of such meeting, and giving full particulars of the nature of the proposed deviation.*

2. I hope to show that Question (1) has, on plain reading of our Constitution and of the Marriage Service, along with the Services of Ordaining of Priests and Bishops is a question that should be answered "NO."

Question (ii) should be answered “NO” in that to bless a marriage between people other than “one man and one woman” is both inconsistent with the Fundamental Declaration and Ruling Principles and is “contrary to or a departure from the doctrine of this Church” (Canon 13, 1988, 5(3))

3. I shall seek to do this by an examination of the two Services mentioned above (2) which render the arguments in Primary Submissions by the Synod of the Diocese of Wangaratta concerning
 - (i) the attempted distinctions made between doctrine and matters of ceremonial, ritual and discipline (e.g. 6.2)
 - (ii) the Appellate Tribunal’s jurisdiction (11ff)
 - (iii) the Constitution (21ff)
 - (iv) the meaning of doctrine (28ff)
 - (v) the supposed differing interpretations of Scripture (64)
 either invalid or unnecessary.
4. In both cases I will seek to demonstrate how the word ‘blessing’ and prayers for blessing in our services are in a broader context which would constrain blessings to people and relationships that are not consistent with Scripture and inconsistent with the godly conduct prayed for in the Absolutions which follow the General Confession of our public services. Such blessings would not be consistent with or conducive to our public responsibility to hold out the promise and assurance of God’s grace to those who are repentant.
5. In appealing to the Book of Common Prayer and Scripture I do so in line with our Ruling Principles, Articles 6,7,19 and 20 and Fundamental Declarations 1-3 which affirm the primary role that Holy Scripture and the teachings of Christ play in our life together as a Communion. Everything must be brought to the touchstone of the Biblical Canon, including our services (Article 20), doctrine (Article 6), conduct that might be “called moral” (Article 7), “necessary to salvation” (Article 6) and the ordering of our sacramental and congregational life (Articles 19 and 34).
6. The BCP Service of Marriage begins with the words “Dearly beloved, 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...” Here we have a direct answer to the question at #58 leaving open the possibility that the context of the formation of our liturgies should be considered in determining whether the BCP teaching on marriage as being between a man and a woman is a question of faith or ceremony reflecting tradition or the secular law of the time.

The intention of this BCP exhortation is to base marriage in the Creation, “instituted of God in the time of man’s innocency”. This is a clear reference to the pre-Fall chapters 1 and 2 of Genesis. This statement takes us directly to Christ’s teaching in Matthew 19:3-7, where, in condemning easy divorce, He affirms marriage as between a man and a woman when He quotes firstly Genesis 1:27 and then 2:18: ⁴ “Haven’t you read,” he replied, “that at the beginning the Creator ‘made them male and female,’ ⁵ and said, ‘For this reason a man will leave his father and mother and be united to his wife, and the two will become one flesh’? ⁶ So they are no longer two, but one flesh. Therefore what God has joined together, let no one separate.”(NIV)

7. This pattern, where blessing is prayed for, is repeated after the vows and the giving and receiving of a ring, and prior to the statement, itself a quotation of Jesus' words in Matthew 19:6, "Those whom God hath joined together let no man put asunder."

*O Eternal God, Creator and Preserver of all mankind, Giver of all spiritual grace, the Author of everlasting life; Send **thy blessing** upon these thy servants, **this man and this woman**, whom we **bless** in thy Name; that, as Isaac and Rebecca lived faithfully together, so these persons may surely perform and keep the vow and covenant betwixt them made (whereof this Ring given and received is a token and pledge,) and may ever remain in perfect love and peace together, **and live according to thy laws**; through Jesus Christ our Lord."*

There is no question, therefore, that our BCP, following our Lord, upholds the Creation mandate for male-female marriage.

8. This is further made plain in the BCP Marriage Service:

- (i) Prayer for children: *O Merciful Lord, and heavenly Father, by whose gracious gift mankind is increased; We beseech thee, assist with thy **blessing** these two persons, **that they may both be fruitful in procreation of children**, and also live together so long in godly love and honesty, that they may see their children christianly and virtuously brought up, to thy praise and honour; through Jesus Christ our Lord.*

Blessing is prayed for because children are a possibility in male-female marriage, once again reflecting our Creator's intention, revealed in the Genesis blessing and command: "God blessed them and said to them, 'Be fruitful and increase in number...'" (Genesis 1:28)

- (i) **and in the blessing**, *Almighty God who in the beginning did create our first parents, **Adam and Eve**, and did sanctify and join them together in marriage; Pour upon you the riches of his grace, sanctify and **bless** you, that ye may please him both in body and soul, and live together in holy love unto your lives' end. Amen*

9. The blessing of a secular marriage is entirely proper where a man and a woman would seek to "live together in holy love unto [their] lives' end" because this is in line with God's revealed will expressed as an ordinance of Creation ("at the time of man's innocency", BCP, following Genesis 1 and 2) and which is in line with our Lord's teaching in Matthew 19:3-7 and explicit throughout the BCP marriage service.
10. It follows that neither same-sex marriage, nor a blessing of same-sex marriage, can be seen as an expression of: "liv(ing) according to Thy laws" or "an honourable estate instituted by God." The institution of marriage by God was expressly to be between a man and a woman in the BCP exhortation and prayers.
11. This is further implied in the Marriage service, in Psalm 128, "**Blessed** are they that fear the Lord: and walk in his ways" and the alternate Psalm (67), "God be merciful to us and **bless** us: and show us the light of his countenance, and be merciful to us. That thy way may be known upon earth: Thy saving health among all nations."

Blessing comes to those who seek to walk in the Lord's ways, though none of us does this perfectly and we constantly need God's pardon, grace and strength to do so.

12. However, blessing is always for the purpose of living in step with the Lord and showing forth His ways on earth. These Psalms are consistent with our public services that, like our Lord, assure us of His grace and blessing when we repent. In Morning and Evening Prayer and the Holy Communion, pardon is available but only given to those who pray "...we do earnestly repent, And are sorry for all our misdoings...Forgive us all that is past: And grant that we may ever hereafter serve and please Thee in newness of life." The Absolution, itself a blessing, comes with the condition "...to all them with hearty repentance and true faith turn to him."
13. All this assumes that same-sex practice (as distinct from same-sex orientation) remains a sin. This has not been addressed and therefore not established in the Wangaratta submission. The following must be taken into account. Our Lord's list of evil things from within our hearts that defile us in Mark 7:20-23: "*He went on: "What comes out of a person is what defiles them. ²¹For it is from within, out of a person's heart, that evil thoughts come—sexual immorality, theft, murder, ²²adultery, greed, malice, deceit, lewdness, envy, slander, arrogance and folly. ²³All these evils come from inside and defile a person"* includes sexual immorality, which is just one of the thirteen unflattering sins. It is generally held to cover all sexual practice that is inconsistent with the considerate sexual act between a man and a woman who are married to each other. It rules out such practices as adultery (also specified), sex between unmarried people and same-sex people, bestiality, prostitution, paedialstry, group sex, and pornography. Other lists of sins could be added from the apostle Paul which extend but do not exhaust the list of sins: Romans 1:18-32; 1 Timothy 1:8-11; 1 Corinthians 6:9-11 and Galatians 5:19-21. The first three of these refer to same-sex practices. These lists remind us that same-sex practice is neither the only sin nor the unforgiveable sin. The wide array, like a mirror, catches us all out, but as with our Lord and His apostle they call us back to Him in repentance and faith. Every Christian prepared to bring every kind of sin in hearty repentance will find pardon and transforming grace. Titus 2:11-14 (one of our set Christmas epistles) sets this forth clearly, reminding every believer, whether of hetero- or same-sex attraction, of the promised grace in Christ that enables us to live for Him in every aspect of our lives.
14. However, to excise one sin, that of same-sex practice, would logically mean that we would no longer expect and require repentance from gossipers, the greedy, thieves, adulterers etc. It would also mean that we should bless any of the activities prohibited in these texts. This would lead to a complete denial of apostolic teaching, not to mention the teaching and discipline of Christ. To allow a blessing of same-sex couples would of necessity lead us to the acceptance of all sin and endorse a gospel that requires no repentance. Such a gospel would amount to a contradiction of our Lord's teaching on forgiveness in His prayer, "Forgive us our sins", His call to repentance at Matthew 3:2, "Repent ye for the kingdom of God is at hand", (BCP Morning Prayer) and His calls for the radical avoidance of sin in the Sermon on the Mount.

15. If we are to exclude same-sex practice from these lists it will mean:

- (i) to be consistent, that we would no longer uphold the long-established practice of offering absolution only after confession in our public liturgies.
- (ii) we would be against:

(a) the teaching of Christ -Matt. 3:2 ("Repent"- BCP Morning Prayer) and John 8:1-11- we cannot, with integrity, rejoice in our Lord's "neither do I condemn you" without heeding His "go and sin no more."

(b) the Apostle John's words, found in 1 John 1:8-9, *If we say that we have no sin, we deceive ourselves, and the truth is not in us. If we confess our sins, he is faithful and just to forgive us our sins, and to cleanse us from all unrighteousness* in Morning and Evening Prayer and Words of Assurance in Holy Communion (1 John 2:1 *If any man sin we have an Advocate with the Father, Jesus Christ the righteous; and he is the propitiation for our sins.*)

(c) our unbroken liturgical order of absolution following confession.

- (iii) We will become a "grace-less", "cheap grace" church since there is no Dominical or Denominational warrant for pardon or assurance of forgiveness to those who remain unrepentant.

16. In the Ordinal for Priests and Bishops our Lord's words from John 20:19ff are quoted and read. The apposite words are "*Whosoever sins ye remit, they are remitted unto them, and whosoever sins ye retain they are retained*" (Bishops) and "*Whose sins that thou dost forgive, they are forgiven, and those sins thou dost retain they are retained*" (Priests).

Were a blessing to be allowed in our Church, as being requested in this Submission, its Priests and Bishops would be guilty of the most serious sins of:

- (i) Withholding grace by removing same-sex practice as a sin.
- (ii) Not offering pardon, and therefore retaining, by withholding the means of remitting/forgiving sins.
- (iii) Failing to teach that this sin is a breach of our Lord's and His apostles' teaching by offering blessing and acceptance apart from repentance and amendment of life. This is contrary to our Lord's commands and discipline.
- (iv) Failing to offer the assurance that grace (as strength) is available to all repentant sinners for amendment, transformation and obedience. This would render us unfaithful shepherds whose teaching is lacking (John 10:12), who fail to minister to God's "children", "Christ's spouse and body" and who fail to trust "the Heavenly assistance of the Holy Ghost" (BCP, Ordering of Priests).

17. The Priests and Bishops concerned are in the most dangerous position themselves and place the church in a position of unmistakeable peril. Consider these statements from the Ordinals:

- (i) *Have always therefore printed in your remembrance, how great a treasure is committed to your charge. For they are the sheep of Christ, which he bought with his death, and for whom he shed his blood. The Church and Congregation whom you must serve, is his Spouse and his Body. And if it shall happen the same Church, or any Member thereof, to take any hurt or hindrance by reason of your negligence, ye know the greatness of the fault, and also the horrible punishment that will ensue.* (The Ordering of Priests.)

- (ii) *...as also to beware, that neither you yourselves offend, nor be occasion that others offend...*
(The Ordering of Priests).
- (iii) The Bishop's question, *Will you then give your faithful diligence always to minister the Doctrine and Sacrament, and the Discipline of Christ, as the Lord commanded, and as this Church and realm hath received the same, according to the Commandments of God; so that you may teach the people committed to your Cure and Charge with all diligence to keep and observe the same?*
And the Priest's answer, *I will do so, by the help of the Lord.* (The Ordering of Priests).
- (iv) The Archbishop's question, *Will you deny all ungodliness and worldly lusts, and live soberly, righteously, and godly, in this present world; that you may show yourself in all things an example of good works unto others, that the adversary may be ashamed, having nothing to say against you?*
And the Bishop's answer, *I will so do, the Lord being my helper.* (The Consecration of Bishops)

18. To which we add the Dominical warnings:

"Therefore anyone who sets aside one of the least of these commands and teaches others accordingly will be called least in the kingdom of heaven, but whoever practices and teaches these commands will be called great in the kingdom of heaven. For I tell you that unless your righteousness surpasses that of the Pharisees and the teachers of the law, you will certainly not enter the kingdom of heaven." (Matthew 5:19-20)

"And whoever welcomes one such child in my name welcomes me. If anyone causes one of these little ones—those who believe in me—to stumble, it would be better for them to have a large millstone hung around their neck and to be drowned in the depths of the sea. Woe to the world because of the things that cause people to stumble! Such things must come, but woe to the person through whom they come!" (Matthew 18:5-7)

THE COMMUNION SERVICE

19. We are taught by Jesus to love both God and others. God's love for us in Christ caused Him to come amongst us and then go to the cross in order to redeem us. This remains His generous purpose. The pattern has always been the same in our liturgies- repentance, faith and assurance with a view to godly living. So we come repentant (Prayer of Preparation, Commandments, General Confession, Absolution), receive the *Words of Assurance for those who truly and humbly repent*, we receive with outstretched hands from our Lord and then we go with the blessing *"... and we most humbly beseech thee, O heavenly Father, so to assist us with thy grace, that we may continue in that holy fellowship, and do all such good works as thou hast prepared for us to walk in; through Jesus Christ our Lord, to whom, with thee and the Holy Ghost, be all honour and glory, world without end. Amen."*

This blessing, always available to forgiven sinners, is held out in the Communion services, but only to the repentant. This teaching is both in line with Christ ("Repent..." Matthew 3:2, Morning Prayer), His apostles (1 John 1:8-9, Morning and Evening Prayer) and our Book of Common Prayer.

20. THE COSTS OF CONFESSIONLESS BLESSING.

- (i) We cannot expect the display of the Holy Spirit's fruit. To put it another way, Galatians 5:19-20 must be owned and repented of if the nourishing and winsome fruits (Galatians 5:21-23) are to be displayed.
- (ii) The power of the gospel to transform will not be seen unless our sin is owned and repented of (1 Cor. 6:9-11). The Corinthian church, despite all its failings, was built upon those from different backgrounds who were repentant, and as such, being transformed by the Holy Spirit. This passage is part of the Canonical Scriptures that our Fundamental Declarations set forth as "the ultimate rule and standard of faith given by inspiration of God and containing all things necessary for salvation." (Constitution, 1.2)

We note that this is part of the same epistle from which we derive significant teachings on matters we (rightly) cherish. These include:

- (a) the importance of unity (chapters 1-3)
- (b) the Lord's Supper (11:17-32), which forms part of the Prayer of Consecration, words of administration and exhortations to a right preparation forgoing to the Table (BCP Holy Communion)
- (c) instructions about good order for fellowship and worship (11:2-16), spiritual gifts etc. (12:1-39)
- (d) the well-known chapter 13 on love and
- (e) the reading from 1 Corinthians 15 on our Lord's resurrection which is the set reading in our 1662 BCP Funeral Service.

The point is, to maintain integrity to our Fundamental Declarations, we cannot receive, indeed rejoice, in these chapters while ignoring or reinterpreting 6:9-11, with its clear affirmation of the power of the gospel to transform sinners of every kind.

21. Article 20, *The Church hath power to decree Rites or 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 be repugnant to another. Wherefore, although the Church be a witness and a keeper of Holy writ, as it ought not to decree any thing against the same, so besides the same ought it not to enforce any thing to be believed for necessity of Salvation*, itself a fundamental expression of our Ruling Principles sets forth the importance of Scripture, and at the same time offers us a vital principle in the interpretation of Scripture. It would be serious enough to set aside this passage (1 Cor. 6:9-11), but even more so when its teaching is fully in accord with other scriptures, including
- (a) concerning the married, male-female context for sexual expression, Genesis 1:27, *So God created mankind in his own image, in the image of God he created them; male and female he created them* and 2:18, *The LORD God said, "It is not good for the man to be alone. I will make a helper suitable for him"* and Matthew 19:4-6, *"Haven't you read," he*

replied, "that at the beginning the Creator 'made them male and female,'⁵ and said, 'For this reason a man will leave his father and mother and be united to his wife, and the two will become one flesh'?⁶ So they are no longer two, but one flesh. Therefore what God has joined together, let no one separate."

- (b) the assurances of washing, sanctification and justification through the work of Jesus on the cross and the Holy Spirit in our lives in passages like John 3:3-5, 1 Peter 1:17-2:3; Ezekiel 36:24-27; Matthew 5:17-20; 1 Thess. 4:1-8 and Titus 3:1-8.
- (c) being a matter of "necessary for salvation", where the phrase *...neither the sexually immoral nor idolaters nor adulterers nor men who have sex with men¹⁰ nor thieves nor the greedy nor drunkards nor slanderers nor swindlers will inherit the kingdom of God* (1 Cor. 6:9b-10) is repeated in Galatians 5:21, following our Lord's words in Matthew 5:20, *For I tell you that unless your righteousness surpasses that of the Pharisees and the teachers of the law, you will certainly not enter the kingdom of heaven* and 5:48, *Be perfect, therefore, as your heavenly Father is perfect.*

22. We will be failing repentant people, our church people and the community by not encouraging distinctive behaviour that is different to the world for the following reasons:

- (a) Blessing worldly behaviour stands in direct contradiction the Baptismal prayers- *O merciful God, grant that the old Adam in this child may be so buried that the new man may be raised up in him[her].*

Grant that he [she] may have power and strength to have victory, and to triumph, against the devil, the world and the flesh.

-and the Baptismal question, *Dost thou, in the name of this child, renounce the devil and all his works, the vain pomp and glory of the world, with all covetous desires of the same, and the carnal desires of the flesh, so that thou wilt not follow, nor be led by them?*

- (b) Appearing to commodify sex as the defining mark of a loving relationship, thus appearing to make sexual relationships a necessary component of a happy life.
- (c) In so doing we neglect the value of non-sexual friendships which are available to all people.
- (d) We let down same-sex attracted people by failing to remind them of God's grace to His trusting people to enable them to live a chaste and celibate life, as is prayed for in the Litany, *That it may please thee to give to all thy people increase of grace to hear meekly thy Word, and to receive it with pure affection, and to bring forth the fruits of the Spirit, **We beseech thee to hear us, good Lord.***

and the Absolution or Remission of sins in Morning Prayer, *...Wherefore let us beseech him to grant us true repentance, and his holy Spirit, that those things may please him, which we do at this present; and that the rest of our life hereafter may be pure, and holy; so that at the last we may come to his eternal joy; through Jesus Christ our Lord. Amen.*

23. Scriptural and BCP blessings are not only conditional upon repentance and faith but are given in order that those who are blessed might be a blessing to others.

- (i) This is, as we noted earlier, clearly seen in Psalm 67:1, one of the set Psalms in the BCP Service of Marriage. The historic blessing of those married in accord with God's word has been experienced by generations of men and women since the teachings of Christ. The blessing of a marriage that falls outside of God's order, reverses the pattern, (of a man and woman complementing each other,) thus inviting God's judgement rather than His blessing. Since the roles have been confused and reversed, the blessing of God is surrendered and instead opens up the possibility of 'anti-blessings', i.e. of being "given up" by God (Romans 1:24, 26, 28).
- (ii) Indeed, offering the sanctioned blessing being proposed renders us complicit in opposing God as the Apostle reminds us at the end of his catalogue of sins that are the result of suppressing God's truth. His concluding words, *Although they know God's righteous decree that those who do such things deserve death, they not only continue to do these very things but also approve of those who practice them*, (Romans 1:32) must be taken seriously by all who exhort one another each week to "*Love God and to love one another.*" We cannot be a blessing to others if we approve that of which our loving God expressly disapproves.
- (iii) The famous blessing of our Lord (Matthew 5:1-11) is pronounced on believers who, recognising their poverty of spirit, come as those mourning their sin humbly in order to receive the righteousness they need from Christ. This, in turn, enables us to be salt and light (5:13-16) in the world which paradoxically persecutes us for knowing Christ and proclaiming His unique salvation and lifestyle. The way of believers will always be different to, and often opposed by, the world. To be a blessing as individuals and as a church will often mean we are out of step with the world we have been called and sent to bless. Here is the paradox, seen in our Lord and expected of His church and its members: to be a blessing to the world we must be prepared to be different to, and opposed by, the world.
- (iv) Blessing is needed by all Christians so that we might please God, and so in the BCP "Prayer for the Clergy and People" (Morning and Evening Prayer) we pray, *Almighty and everlasting God, who alone workest great marvels; Send down upon our Bishops, and Curates, and all Congregations committed to their charge, the healthful Spirit of thy grace; and that they may truly please thee, pour upon them the continual dew of thy blessing. Grant this, O Lord, for the honour of our Advocate and Mediator, Jesus Christ. Amen.*
- (v) The previously mentioned Psalm 67 is also to be found as one of the two responses to the reading of the New Testament in Evening Prayer. An obedient response will seek God's mercy and the blessing of his "countenance" that "thy way may be known upon earth: thy saving power among all nations." (67:1-2)

To seek God's blessing for a sexual relationship outside of that set forth in both Old and New Testaments is not something we can do if we seek to uphold any or all of our Fundamental Declarations or Ruling Principles, being in contradiction of

- (a) Old and New Testament Canon (Gen. 1:27; 2:24)
- (b) Jesus' endorsement of the above in Matthew 19:3-7
- (c) The BCP Marriage Service

- (vi) The Book of Common Prayer for the Ember Weeks concludes:
And to those which shall be ordained to any holy function give thy grace and heavenly benediction; that both by their life and doctrine they may set forth thy glory and set forward the salvation of all men; through Jesus Christ our Lord. Amen

To ask for God's "heavenly benediction" is to ask for his blessing. The purpose of this heavenly benediction is that a minister's life and doctrine may "set forth thy glory" and "set forward the salvation of all men." Prayer for blessing is clearly contingent upon and for the purpose of living and teaching what is in accord with God's will as revealed in Scripture (Article 6 and enshrined in the Book of Common Prayer.) The Wangaratta proposed blessing now before us cannot expect God's heavenly benediction. However, it can be expected when a minister's life and teaching is in accord with Scripture and our Ruling Principles.

The outlined service seeking God's blessing on a same-sex couple married in accord with the Australian Marriage Act, now amended, is inconsistent with our formularies in both its request for blessing and the relationship for which that blessing is sought, since we are not at liberty as Anglicans to bless a relationship that both the Book of Common Prayer and Scripture confirm as being outside of God's will.

24. CONCLUSION

- (i) In light of the above I would respectfully suggest that the Appellate Tribunal's task is not to adjudicate theology, but to make its vital decision on the unmistakably clear statements of both the Fundamental Declarations and the Ruling Principles.

In summary:

- of Christ's teaching in His endorsement of the Creational account of Genesis 1:26-27 and 2:24 in Matthew 19:3-7
 - of the Book of Common Prayer Marriage Service which grounds this in the same Genesis account and teaching of Christ endorsed by His apostle (Eph. 5:31)
- (ii) The Wangaratta proposed service of blessing fails to explain
- (a) why it can advocate a practice through the provision of an authorized blessing that, along with many others, is considered a sin in both the canonical scriptures and the Book of Common Prayer and
 - (b) why this proposal, which overturns the confession-absolution pattern of our services should be made an exception to this pattern.
- (iii) That the blessing of God is a display of His grace and ought to be prayed for publicly is not in question. The question is, "Can a blessing be given to a relationship or persons whose relationship is out of step with the Canonical Scriptures and the Marriage Service of the Book of Common Prayer?"

This is not a matter of denying either pardon or ongoing grace. To be consistent with both Scripture and the Book of Common Prayer, pardon and grace ought only be offered upon repentance and trust in Christ, which will be seen in a desire for amendment of life. The commentary of John Murray is apposite. "There is a total difference between surviving sin and reigning sin; the regenerate in conflict with sin and the unregenerate complacent to sin. It is one thing for sin to live in us; it is another for us to live in sin."

25. The pattern of pardon following confession of sin is that of the canonical Scriptures and is therefore repeated and required in our public services. This is accompanied by the expectation that general confession be demonstrated in amendment of life, as indeed, it is prayed for in the Absolution.

A "Yes" answer to either or both of the Primate's questions would be an endorsement of behaviour and a relationship which is clearly inconsistent "with the doctrine of this church" and "with the Fundamental declarations and Ruling Principles in the Constitution of the Anglican Church of Australia."

26. For these reasons I respectfully call upon the Tribunal to answer "No" to both Question 1 and Question 2 of the Primate's Reference so that Section 5(2) "must be reverent and edifying and must not be contrary to or a departure from the doctrine of this church", may, in line with our Fundamental Declarations and Ruling Principles, be upheld and continued.

Peter R. Brain

9th December, 2019

SUBMISSION TO THE APPELLATE TRIBUNAL

RECEIVED

- 9 DEC 2019

GENERAL SYNOD

6

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*

Ridley College makes the following submission:

1. In preparing candidates for ordination for several dioceses, Ridley College is a party interested in the doctrine and practice of the Anglican Church of Australia.
2. Ridley College upholds the practice that only those ordained as priest can undertake a liturgical ministry of blessing, and acknowledges that the nature of blessing belongs to the spiritual not temporal sphere.
3. As the matter of blessing belongs to the spiritual authority of the Anglican Church, in the matter of the blessing of persons of the same gender married under civil law, we argue that the Diocese of Wangaratta has acted beyond its authority which in the province of Victoria restricts dioceses to temporal authority.
4. The service for the blessing of civil union prepared by the Liturgy Commission, on which the Diocese of Wangaratta has built its case, did not contain within its remit an application to the blessing of same sex marriage. Such an application falls outside of the design of the Canon concerning Services 1992 which gave limited permission for local variance. The application to same sex marriage is clearly not just a matter of local contingencies but of national concern and implications.
5. In the Scriptures, blessing is not merely a practice which can be offered indiscriminately but assumes that the words spoken advance divine purposes for the creation. We maintain that a blessing is not a pastoral affirmation, but a theological recommendation. The blessing of God in Genesis 1 is not focussed on human flourishing generically, but on God's specific command to multiply and subdue the earth. The language of "good" has teleological shape, for something is good when it furthers divine intentions for the creation. The submission made by Professor Lee fails to recognise that blessing in Genesis 1 is dependent on God's design for human procreation within the creation.
6. After Adam and Eve sin in Genesis 3, blessing is understood in relationship to curse when human beings do not pursue God's divine intentions for the creation (for example in Deuteronomy 27-28). Professor Lee's submission does not recognise that the Scriptures make clear that human behaviour can fall outside of the sphere of God's blessing. Same sex union is such an example.
7. Professor Lee states that we have no right to withhold what God has blessed. However this assumes a great deal about the nature of blessing and asserts without qualification that the blessing of same sex marriage is indeed consistent with God's will.
8. In Anglican liturgy, the blessing of the priest at the end of Eucharist assumes the prior confession of sin and consequent absolution given by the priest before the Eucharist. Blessing is not disconnected from questions of sin and obedience. Not every human practice can be blessed.
9. In liturgies used for blessing same sex unions drafted in other jurisdictions, we note that prefaces focus on a liberationist ethic appealing to the story of the Exodus, avoiding arguments which appeal to the creation account in Genesis 1 and 2. This demonstrates that liturgists have decided that these accounts from Genesis are ultimately unable to support a defence of the blessing of same sex unions.

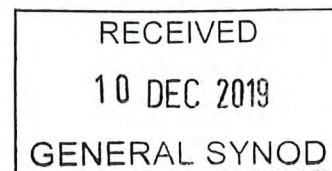
SUBMISSION TO THE APPELLATE TRIBUNAL

10. Professor Lee recognises that there is no single text in the Scriptures which affirms either same sex intimacy or same sex marriage. At this point we concur.
11. Ridley College has produced a document outlining several positions which are held within our national church on the matter of same sex marriage. It should be pointed out that the position upheld by the Diocese of Wangaratta and Professor Lee is not the unanimous position of those arguing for change in our regulations. Their arguments do not command universal acceptance by those advocating for change.
12. It seems to us that the position espoused by the Diocese of Wangaratta is a minority opinion in the national church and should not be assumed to command majority support.
13. We disagree with the conclusion of the Wangaratta Diocese that marriage is not a doctrine in our church. There are many in our church who affirm holy matrimony as a sacrament, a view which thereby asserts marriage to be a matter of doctrine.
14. As the Book of Common Prayer contains a marriage service which asserts the rightful union of a man and a woman in marriage, and the Book of Common Prayer is protected in our Constitution as foundational to the life of the Anglican Church of Australia, only a union between a man and a woman can be blessed in our church.
15. Further, the service of marriage in BCP contains the explicit affirmation (using the words of Christ from Matthew 19) that marriage between a man and a woman is a creation good, a statement that constitutes the doctrine of Christ. It is our position that the regulation recently formulated by the Dioceses of Wangaratta is in contravention of the Fundamental Declarations.
16. The language of “doctrine” is used to describe that which is officially taught, and there can be no doubt that the official teaching of the Church in England since 1662 and derivatively the Anglican Church of Australia has been that marriage is between a man and a woman.
17. The vocabulary of “doctrine” has a particular constitutional or legal definition because it appears in our constitution in the Fundamental Declarations. Teaching on marriage (which is assumed to be the doctrine of Christ in BCP) is not in our church of less significance than the content of the Creeds which is also affirmed in the Fundamental Declarations I(1), along with the authority of the Holy Scriptures I(2).
18. It is argued that Anglican Christians have freedom in matters of adiaphora outside of our commitment to the Apostles’ and Nicene Creeds. However we must recognise that the purpose of these catholic Creeds is to assert and protect the deity of the Son and the deity of the Spirit, not just to defend philosophically the nature of the Trinity. Our unity as a church is not based on our ability to affirm credal beliefs but more fundamentally to declare thereby our commitment to the Lordship of Christ and of the Spirit over each part of our life. The creeds have a disciplinary function. Unity is compromised when Christ’s authority over the expression of same sex intimacy is contested.
19. The doctrine and principles of our church explicitly include the teaching of the Book of Common Prayer according to the Ruling Principles II(4), which defines and circumscribes our teaching concerning marriage.
20. It is expressly stated in our Ruling Principles II(6) that our unity is based on the Fundamental Declarations, in which questions of doctrine are affirmed and deviations from such doctrines are expressly forbidden.

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21. It should further be recognised that the Australian postal survey concerning same sex marriage returned results which demonstrate less support amongst religious groups to change the definition of marriage than in the broader population.

Anglican Church of Australia
Appellate Tribunal



7

10 December 2019

Anne Hywood
Registrar of Appellate Tribunal

appellatetribunal@anglican.org.au

RE: Submission in Response to *Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019 passed by the Synod of the Diocese of Wangaratta.*

Question 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.

The actions taken by the Synod of the Diocese of Wangaratta are in error of biblical teaching and of the constitution of the Anglican Church of Australia. By the act of blessing a same sex marriage they are condoning an act that is;

- 1: Contrary to the fundamental teaching of the Anglican Church of Australia in that the blessing and condoning of a same sex marriage disregards the reverence and purpose of the Solemnization of Matrimony Ceremony contained in the Book of Common Prayer.
- 2: Contrary to the Fundamental Declaration of The Constitution of the Anglican Church of Australia Part 1, Chapter 1- Fundamental Declarations, Item 2
This Church receives all the canonical scriptures of the Old and New Testaments as being the ultimate rule and standard of faith given by the inspiration of God and containing all things necessary for salvation.
- 3: Contrary to the Fundamental Declaration of The Constitution of the Anglican Church of Australia Part 1, Chapter 1- Fundamental Declarations, Item 3
"This Church will ever obey the commands of Christ's, teach his doctrine, administer His sacraments of Holy Baptism and Holy Communion, follow and uphold His discipline and preserve the three orders of bishops, priests and deacons in the sacred ministry.
- 4: Contrary to scriptural teaching of Genesis 1-2 of marriage between a man and a woman and confirmed by Christ in Mathew 19.
Refer also to General Synod year 2017 motion moved by The Very Rev'd Kanishka Raffel

noting in item B) “a man shall leave his father and mother and be united with his wife, and the two will become one flesh [Matt 19:6])

5: Contrary to Matrimony (Prohibited Relationships) Canon 1981

Prohibited relationship as defined in the Book Leviticus

6: Contrary to Constitution of the Anglican Church of Australia – Chapter 2 RULING PRINCIPLES

The proposal to bless same sex marriages is in conflict with Chapter 2 RULING PRINCIPLES ie; “the above named Book of Common Prayer, together with the Thirty Nine Articles, be regarded as the authorise standard of worship and doctrine in this Church, and 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.”

7: Contrary to General Synod Definition of Marriage

General Synod year 2010 passed a resolution “that the Anglican Church of Australia expresses its commitment to the present definition of Marriage under Commonwealth law.”

Question 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 Ruling Principles in the Constitution of the Anglican Church of Australia.

Canon Concerning Services 1992

Section 5

- 5:1 *The minister may make and use variations which are not of substantial importance in any form of service authorised by section 4 according to particular circumstances.*
- 5:2 *Subject to any regulations made from time to time by the Synod of a diocese, a minister of that diocese may on occasion for which no provision is made use forms of service considered suitable by the minister for those occasions.*
- 5:3 *All variations in forms of service and all forms of service used must be reverent and edifying , and must not be contrary to or a departure from the doctrine of this Church.*

Response to Variations by the Wangaratta Diocese

- 5:1 Response The variation by the made and used **is of substantial importance** as it is condoning an act that is contrary to;
- a) Scriptural teaching – see Item 4 above
 - b) General Synod Definition of Marriage Motions passed years 2010 and 2017
 - c) Contrary to Matrimony (Prohibited Relationships) Canon 1981 – see item 5 above

5:2 Response The "form of service considered suitable" is **unsuitable**, in that It is asking God the Father and Jesus Christ to bless an act that is;

- a) Contrary to marriage as portrayed in Scripture
- b) Contrary to marriage as defined in motions passed by general synod
- c) Contrary to the Fundamental Declarations of The Constitution of the Anglican Church of Australia

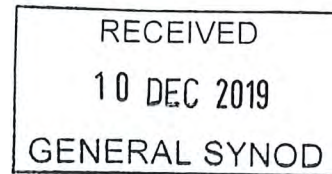
5:3 Response The form of service used;

- a) Does not indicate "reverence" for the traditional Solemnization of Matrimony Ceremony contained in the Book of Common Prayer.
- b) Does not "edify" the Church, rather it is causing grief and division
- c) It is "contrary" to, and a departure from the doctrine of this Church

I respectfully request the tribunal give consideration to my arguments and not sacrifice sound doctrine to appease ideology conforming to the way of the world, so that the Anglican Church may be known and respected for holding fast to the truth of scripture.

Yours sincerely,
Russell Delaney

TO THE APPELLATE TRIBUNAL
ANGLICAN CHURCH OF AUSTRALIA



1
8

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-legalese 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 Iacobucci 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.

**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**

**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..."

HELEN AND BRIAN GITSHAM

10 December, 2019

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 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.

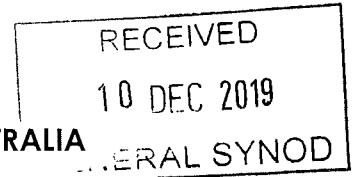
The lesson for Labor's engagement with faith, at least as conceptualised by the recent review into the May defeat, is: "This party would be wise to reconnect with people of faith on social justice issues and emphasise its historic links with mainstream churches." The review frankly acknowledged that 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 ensure 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 protection of religious freedom across government, with discrimination law.

Mark Fowler is a practising lawyer and an adjunct associate professor at the University of Notre Dame school of law, Sydney.



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*.

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 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 14 October 2019 (**GS Member Reference**).

The Questions

Primate's Reference

2. EFAC 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 Regulation is not validly made.

GS Member Reference

3. EFAC 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.

Submission of EFAC (Evangelical Fellowship in the Anglican Communion) Australia

On behalf of EFAC New South Wales, Victoria, Tasmania, Canberra/Goulburn, Queensland, South Australia and Western Australia.

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, our Ruling Principles and the doctrine and practice of the BCP.

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 they have real personal implications for them. If the Tribunal were to rule that the Wangaratta Blessing of Persons according to the Marriage Act were legal then it would potentially lead some persons to consider leaving their Diocese or to seek alternative arrangements.

It is widely acknowledged that evangelical Anglican parishes are, with a few exceptions, the strongest parishes in most Dioceses in our nation. Numerically, they are a very large cohort, if not the majority of worshipping Anglicans in our nation. These churches and their people would be deeply disturbed by such a major potential shift in the life of our church.

The submission from the Diocese of Wangaratta seemingly hangs or falls on their contention that the proposal is not a matter of doctrine. It is simply a set of regulations for the conduct of a ceremony to bless

persons who have participated in a civil ceremony of marriage. Given that they use the language of the Marriage Act (amended in 2017), they acknowledge that this is a regulation that would enable the blessing of the marriage of two persons of the same sex.

In making this submission we note that the Wangaratta submission takes the view that these are simply regulations to amend a service and therefore it can be legislated locally with no wider import.

In the Constitution it is stated as a Ruling Principle:

*'4. This Church, being derived from the Church of England, retains and approves the doctrine and principles of the Church of England embodied in the Book of Common Prayer together with the Form and Manner of Making Ordaining and Consecrating of Bishops, Priests and Deacons and in the Articles of Religion sometimes called the Thirty-nine Articles but has plenary authority at its own discretion to make statements as to the faith ritual ceremonial or discipline of this Church and to order its forms of worship and rules of discipline and to alter or revise such statements, forms and rules, **provided that all such statements, forms, rules or alteration or revision thereof are consistent with the Fundamental Declarations contained herein and are made as prescribed by this Constitution. Provided, and it is hereby further declared, that the above-named Book of Common Prayer, together with the Thirty-Nine Articles, be regarded as the authorised standard of worship and doctrine in this Church, and 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.** Provided further that until other order be taken by canon made in accordance with this Constitution, **a bishop of a diocese may, at his discretion, permit such deviations from the existing order of service, not contravening any principle of doctrine or worship as aforesaid, as shall be submitted to him by the incumbent and churchwardens of a parish.**'*

The Canon Concerning Services states at 5 (3)

*'All variations in forms of service and all forms of service used must be reverent and edifying and **must not be contrary to or a departure from the doctrine of this Church.**'*

Both the Constitution and the Canon Concerning Services consistently allow a variety in liturgy (i.e., rites and ceremonies) from time to time. However they are very clear that any such variation needs to be consistent with the Fundamental Declarations (Creeds, Scripture, Commands of Christ). It is also clear that any variation should be consistent with the principles of doctrine and worship as expressed in the Book of Common Prayer and the Thirty-Nine Articles.

We contend that:

1. The proposed regulations are contrary to the Fundamental Declarations, especially with regard to the revelation of Holy Scripture (Section 2) and the commands of Christ (Section 3)

2. That the regulations allow forms of service which are contrary to the doctrine of the church as expressed in the Book of Common Prayer and therefore breach the restriction 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)

The church has always upheld the view that a marriage is between a man and a woman. This is a part of the creation mandate expressed in Genesis 1 and 2. Jesus himself affirmed this teaching, as we read in Matthew 19. As such it is therefore a part of the Doctrine of Christ and is normative regardless of time, culture or context.

The Apostles also upheld this teaching in Ephesians 5, Colossians 3 and 1 Peter 3.

While these are difficult passages in our current cultural context, Scripture also explicitly excludes the possibility of active same-sex relationships (Romans 1 and 1 Corinthians 6). We hasten to note that those who are same-sex attracted are loved by God and should be fully accepted in God's church. We affirm the many godly women and men who are same-sex attracted and have lived faithfully according to the teaching of Christ. We reject all forms of homophobia that sadly have been part of our church life.

The introduction to the Book of Common Prayer describes Christian marriage in the following way:

*'DEARLY beloved, 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 of God in the time of man's innocency, signifying unto us the mystical union that is betwixt Christ and his Church; which holy estate Christ adorned and beautified with his presence, and first miracle that he wrought, in Cana of Galilee; and is commended of Saint Paul to be honourable among all men: and therefore is not by any to be enterprised, nor taken in hand, unadvisedly, lightly, or wantonly, to satisfy men's carnal lusts and appetites, like brute beasts that have no understanding; but reverently, discreetly, advisedly, soberly, and in the fear of God; duly considering the causes for which Matrimony was ordained.*

First, It was ordained for the procreation of children, to be brought up in the fear and nurture of the Lord, and to the praise of his holy Name.

Secondly, It was ordained for 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.

Thirdly, It was ordained for the mutual society, help, and comfort, that the one ought to have of the other, both in prosperity and adversity. Into which holy estate these two persons present come now to be joined. Therefore if any man can shew any just cause, why they may not lawfully be joined together, let him now speak, or else hereafter for ever hold his peace.'

The doctrine of marriage as described in the Book of Common Prayer was clearly intended to be between a man and a woman and was given for their mutual benefit and the good order of society.

A Prayer Book for Australia (1995) Order 2 states the same principles in a more contemporary way.

*'Scripture teaches that marriage is a lifelong partnership **uniting a woman and a man in heart, mind and body. In the joy of their union, husband and wife** enrich and respond to each other growing in tenderness and understanding.'*

At this point we note the argument advanced by Rev Prof Matthew Anstey in his article 'Scripture and Moral Reasoning' in the General Synod Doctrine Commission Papers (2019).

In his paper Anstey states on page 60:

'Scripture shows us how the people of God come to make moral and theological judgements, rather than providing the substantive content of those judgements. Hence to be faithful to Scripture in this debate does not mean we exegete Scripture and apply to lived human experience a timeless moral-doctrinal precept but rather we seek to make our case for the doctrinal position we are arguing in dialogue with both Scripture and lived human experience. (Johnson is footnoted at this point 'Scripture... points readers to the human body as the preeminent place of God's self-disclosure.)'

He goes on to quote and seemingly endorses the argument advanced by Johnson:

'I think it is important to state clearly that we do (with regard to homosexuality), in fact, reject the straightforward commands of Scripture, and appeal instead to another authority when we declare that same -sex unions can be holy and good. And what exactly is that authority? We appeal explicitly to the weight of our own experience and the experience thousands of others have witnessed to, which tells us that to claim our own sexual orientation is in fact to accept the way in which God has created us. By so doing, we explicitly reject as well the premises of the scriptural statements condemning homosexuality-namely, that it is a vice freely chosen, a symptom of human corruption, and disobedience to God's created order.'

(Johnson, commonwealmagazine.org/homosexuality-church-0)

As Anstey concludes:

'We are not rejecting the word of God, but discerning and embracing the word of God.'

(p.70 General Synod Doctrine Commission papers)

It is hard to see how the views of Anstey, and the quotes from Johnson which he affirms, can be considered to be consistent with the teaching of Holy Scripture, the doctrine of Christ and the doctrine of marriage in the Book of Common Prayer and A Prayer Book for Australia. As much as Anstey says he is not rejecting the word of God, he upholds Johnson's

explicit rejection of the word of God in relation to these matters. This approach to Holy Scripture is inconsistent with the Article XX – "it is not lawful for the Church to ordain any thing that is contrary to God's Word written, neither may it so expound one place of Scripture, that it be repugnant to another."

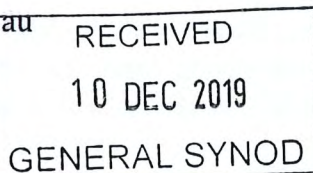
In conclusion we urge the Appellate Tribunal to determine that the Regulations proposed by the Diocese of Wangaratta, inasmuch that they allow the blessing of a same-sex marriage, are inconsistent with the doctrine of our church as described in our formularies. In weighing their decisions the Tribunal needs to be aware of the many faithful evangelical Anglicans who affirm and uphold the doctrine of Christ as expressed in the Fundamental Declarations and Ruling Principles of our Church.

The blessing of same-sex marriages is a matter of doctrine that has had serious ramifications in the Anglican Communion over the past two decades. It was the action of blessing same-sex marriages in the Diocese of New Westminster (Canada) that began a "tear in the fabric of the communion" that is still unravelling. The Diocese of Wangaratta should not be able to unilaterally change the doctrine and practice of the church so as to bless and thereby legitimise same-sex marriages. To do this (without at least the sanction of General Synod Canon authorising such a change) means that Evangelical (and Anglo-catholic/any other) clergy who hold office in such a diocese will find themselves in a minority position in relation to their Bishop. Many will feel in good conscience that they cannot submit to the authority of Bishop who authorises actions which are contrary to the teaching of Christ and the doctrine of the wider Anglican Church of Australia.

Bishop Stephen Hale
Chair
EFAC Australia and EFAC Global



To: The Appellate Tribunal
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10

7th December 2019

Submission regarding the Primate's Reference under Section 63 of the Constitution

Regarding Blessings of Persons Married According to the Marriage Act 1961 Regulations 2019 (Wangaratta)

We, the Wardens, Clergy and Ministry Unit Councillors of the Good Shepherd Anglican Church Edge Hill, wish to express our views on the three questions referred to the Tribunal by the Primate regarding the above Regulations.

Definitions in this submission:

- **'The Regulations'** refer to the synod of the Diocese of Wangaratta's *Blessings of Persons Married According to the Marriage Act 1961 Regulations 2019*
- **'The Church'** refers to the Anglican Church of Australia.
- **'The Constitution'** refers to the Fundamental Declarations and Ruling Principles in the Constitution of the Anglican Church of Australia.
- **'Article'** refers to the 39 Articles of Religion of the Anglican Church.
- **'Doctrine'** refers to a belief or set of beliefs held or taught by the Anglican Church of Australia ('the Church').

We submit the following:

1. The Church holds doctrines regarding marriage, which are clear and unambiguous. For instance, 'The doctrine of this Church is that marriage is a lifelong union between a man and a woman' (Bishops of the Anglican Church of Australia, Response to Recent Changes in the Marriage Act, 2018).
2. Similarly, General Synod in 2017 passed the motion that 'marriage is between a man and woman...' and 'notes with regret that this step' [of the Scottish Episcopal Church to allow clergy to marry same-sex couples] is 'contrary to the doctrine of our Church and the teaching of Christ.'
3. The Regulations seek to 'bless', that is, convey 'God's favour' (Rev Canon Dorothy Lee - submission to the synod of Wangaratta), on same-sex unions, which according to General Synod are 'contrary to the doctrine of the Church and the teaching of Christ'.
4. The Regulations are therefore 'a departure from the doctrine of the Church.'

Ordinary people following an extraordinary God

5. It is clear from Scripture that God does not bless what is contrary to his will and commands. Instead, we read: 'See I am setting before you today a blessing and a curse – the blessing if you obey the commands of the Lord your God...the curse if you disobey.' (Deuteronomy 11:26-28)
6. There are no positive references to same-sex sexual practice in the Bible.
7. Instead, there are clear prohibitions and adverse consequences of such practice in Scripture, most notably in Leviticus, Romans, 1 Corinthians and 1 Timothy. Recent attempts to construct a less negative Biblical view of same-sex relationships, by linguistically re-interpreting these passages, fail to take account of the clear affirmation of heterosexual marriage in Scripture.
8. The normative references to human sexuality and male-female marriage are found in the Creation narratives in Genesis 1 and 2, affirmed by Jesus in Matthew 19:1-12: 'Haven't you read,' he replied, 'that at the beginning the Creator made them male and female, and said, 'For this reason a man will leave his father and mother and be united to his wife, and the two will become one flesh.'
9. As the Regulations are seeking to convey God's blessing on a practice that is never approved, but is instead contrary to God's written commands, they are contrary to Article XX, which states that 'it is not lawful for the Church to ordain any thing that is contrary to God's Word written'.
10. By seeking to bless what is prohibited in Scripture, the Regulations are not consistent with the Constitution which, 'receives all the canonical scriptures of the Old and New Testaments as being the ultimate rule and standard of faith', and which accepts the Book of Common Prayer 'together with the Thirty Nine Articles...as the authorised standard of worship and doctrine in this Church.'
11. In summary:
 - a. the Regulations are a departure from the doctrine of the Church;
 - b. they are not consistent with the Constitution;
 - c. they are contrary to the teaching of the canonical scriptures of the Old and New Testaments;
 - d. they are contrary to Article XX of the Anglican Church.
12. So based on a plain and factual reading of the doctrine of the Church, the Constitution, the teaching of the canonical scriptures, and the Articles, the answers to the questions from the Primate regarding the legitimacy of the Regulations are 'No', 'No' and 'No'.



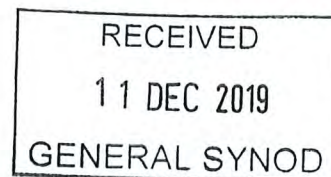
Dr James Sartain, Churchwarden,
on behalf of the Wardens, Clergy and Ministry Unit Councillors of the Good Shepherd Anglican Church
Edge Hill.

The Ministry Unit Council of Ross River Anglican Church, Townsville, has also given its support to this submission.

Ordinary people following an extraordinary God

**SUBMISSION FROM DAVID SECCOMBE TO APPELLATE TRIBUNAL REGARDING THE
BLESSING OF SAME SEX MARRIAGES**

The Registrar
Appellate Tribunal
General Synod Office Anglican Church of Australia
189 Kent St
Sydney NSW 2000



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appellatetribunal@anglican.org.au

Dear Registrar,

I am grateful for the opportunity to give a point of view in response to the submission of the Synod of the Diocese of Wangaratta. I am David Peter Seccombe BSc Hons, ThL (ACT), BD Hons (London), DipRE (MCD), PhD (Cantab), an ordained priest of the Anglican Church (Diocese of Perth). Besides a curacy, some short appointments and locums, I have been Rector of a Perth parish (St Matthews Shenton Park) for 14 years and been Principal of an Anglican theological college (George Whitefield College in Cape Town) for 20 years. My submission is as follows.

**Primate's Reference to the Appellate Tribunal – Blessing of Persons Married According to
the Marriage Act 1961 Regulations 2019 (Diocese of Wangaratta)**

In answer to the questions referred to the Appellate Tribunal I submit

The Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019 made by the Synod of the Diocese of Wangaratta is **inconsistent** with the Fundamental Declarations and Ruling Principles in the Constitution of the Anglican Church of Australia.

The regulation is **not validly made** pursuant to the Canon Concerning Services 1992.

To both questions I answer that the regulation, insofar as it is applied to the blessing of “marriages” of persons of the same sex and/or gender, proposes to bless what is contrary to God’s law and Christ’s gospel, and, as such, is against the fundamental declarations (Fundamental Declarations [1.2, 3]), and inconsistent with the teaching of the Book of Common Prayer (Ruling Principles [1.4]),

There are many aspects of this issue, which, I am certain, will be addressed by others. I will address just one, that has proved controversial and troublesome, and affects some fundamental understandings.

Article 7 of the Thirty Nine Articles of Religion speaks of the Law and Commandments of God. In the context of declaring the agreement of Old and New Testaments it states:

Although the Law given from God by Moses, as touching Ceremonies and Rites do not bind Christian men, nor the Civil precepts thereof ought of necessity to be received in any commonwealth; yet notwithstanding, no Christian man whatsoever is free from the obedience of the Commandments which are called Moral.

I maintain that the prohibition of sodomy, both in the Old Testament and the New, is, and has always been understood in the Church, to fall neither into the ceremonial nor civil category, but to be a commandment of God and part of his moral Law.

A synod resolution whose intention or effect is to imply God's allowance (even blessing) of such behaviour would, therefore, be contrary to the law of God.

Furthermore, since the New Testament declares that such behaviour, unrepented, bars a person from the kingdom of God (1 Cor 6.9-11), such a resolution becomes a gospel matter. Encouragement of such behaviour endangers vulnerable people's inheriting eternal life, and becomes for whoever promotes such encouragement, an offense such as Jesus warns against in the passage about the millstone (Matt 18.6; Mk 9.42; Luke 17.2).

I would submit, therefore, that legal services of blessing for same-sex 'marriages' in our Church would throw us into contempt of God's Law, Commandments and Gospel.

Further, such would inevitably lead to serious disorder in the Church, in that many Christian people, including many ministers of the Church, would dispute their synod's right to legislate contrary to God's law and gospel (and the Appellate Tribunal's right) and would be placed in a situation where they would be unable to acknowledge their synod's authority, and their bishop's spiritual oversight.

Further, such would destroy our claim to be a truly catholic and apostolic church, bring our Church into conflict with many orthodox churches, including the Roman Catholic Church, and, leave these churches dangerously exposed to community and governmental pressure.

Furthermore, since recourse to the law of God is often countered by a facile reference to slavery ('the Bible allows slavery'), I would wish to add:

That this is a false comparison.

That what Scripture sometimes allows (like divorce, 'because of your hardness of heart' (Mark 10.5)), in no ways allows the laws of God to be discounted and overridden.

That God's definitive act in the Old Testament was a liberation of his people from slavery.

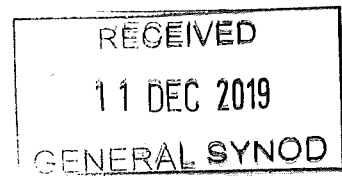
That the redemption effected by the Son of God was also an act of liberation.

And that the tenor of Holy Scripture is that God is at work to redeem his creation from the bondage into which it has fallen through sin.

I therefore humbly request that the Appellate Tribunal find this motion inconsistent with the beliefs of our Church (and *the* Church), and the Christian Faith.

Yours faithfully,

David Seccombe
11th December 2019



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Submission
to the
Appellate Tribunal of the Anglican Church of Australia
re
Primate's References under Section 63 of the Constitution
on
**Blessing of Persons Married According to the Marriage Act 1961
Regulations 2019 (Wangaratta)**

by
Dr David Phillips, BSc, PhD, ThA
Tea Tree Gully Anglican Church
Diocese of Adelaide

11 December 2019

FIRST REFERENCE

On 5 September 2019 the Primate made the following Reference to the Appellate Tribunal:

- A. At a session in August 2019 the Synod of the Diocese of Wangaratta purportedly made the **Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019** pursuant to Section 5 (2) of the *Canon Concerning Services 1992*.
- B. Section 5 (3) of the Canon Concerning Services 1992 provides that all forms of service used pursuant to Section 5 (2) “must be reverent and edifying and must not be contrary to or a departure from the doctrine of the Church.”

THE FOLLOWING QUESTIONS arising under the Constitution are referred to the Appellate Tribunal

1. Whether the regulation **Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019** made by the Synod of the Diocese of Wangaratta is consistent with the Fundamental Declarations and Ruling Principles in the Constitution of the Anglican Church of Australia.
2. Whether the regulation is validly made pursuant to the *Canon Concerning Services 1992*.

SECOND REFERENCE

On 21 October 2019 the Primate made an additional Reference to the Appellate Tribunal, at the request of 25 members of the General Synod, including:

THE FOLLOWING QUESTIONS arising under the Constitution are referred 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.
3. Whether, in light of the determinations to be made in Questions 1 & 2, the Regulations are validly made pursuant to the *Canon Concerning Services 1992*.

FUNDAMENTAL DECLARATIONS

The Fundamental Declarations are (emphasis added):

1. The Anglican Church of Australia, being a part of the One Holy Catholic and Apostolic Church of Christ, **holds the Christian Faith as professed by the Church of Christ from primitive times** and in particular as set forth in the creeds known as the Nicene Creed and the Apostles' Creed.
2. **This 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.**
3. **This Church will ever obey the commands of Christ, teach His doctrine,** administer His sacraments of Holy Baptism and Holy Communion, **follow and uphold His discipline** and preserve the three orders of bishops, priests and deacons in the sacred ministry.

RULING PRINCIPLES

The Ruling Principles are (emphasis added):

4. This Church, being derived from the Church of England, **retains and approves the doctrine and principles of the Church of England embodied in the Book of Common Prayer** together with the Form and Manner of Making Ordaining and Consecrating of Bishops, Priests and Deacons **and in the Articles of Religion sometimes called the Thirty-nine Articles** but has plenary authority at its own discretion to make statements as to the faith ritual ceremonial or discipline of this Church and to order its forms of worship and rules of discipline and to alter or revise such statements, forms and rules, provided that all such statements, forms, rules or alteration or revision thereof are consistent with the Fundamental Declarations contained herein and are made as prescribed by this Constitution. Provided, and it is hereby further declared, that **the above-named Book of Common Prayer, together with the Thirty-nine Articles, be regarded as the authorised standard of worship and doctrine in this Church, and 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.**

Provided further that until other order be taken by canon made in accordance with this Constitution, a bishop of a diocese may, at his discretion, permit such deviations from the existing order of service, not contravening any principle of doctrine or worship as aforesaid, as shall be submitted to him by the incumbent and churchwardens of a parish.

Provided also that no such request shall be preferred to the bishop of a diocese until the incumbent and a majority of the parishioners present and voting at a meeting of parishioners, duly convened for the purpose, shall signify assent to such proposed deviations. Such meeting shall be duly convened by writing, placed in a prominent position at each entrance to the church and by announcement at the morning and evening services, or at the service if only one, at least two Sundays before such meeting, stating the time and place of such meeting, and giving full particulars of the nature of the proposed deviation.

5. **Subject to the Fundamental Declarations and the provisions of this chapter** this Church has plenary authority and power to make canons, ordinances and rules for the order and good government of the Church, and to administer the affairs thereof. Such authority and power may be exercised by the several synods and tribunals in accordance with the provisions of this Constitution.

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SUBMISSION BY DR DAVID PHILLIPS

Introduction

1. This submission addresses the questions posed by the Primate regarding the *Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019* (**Wangaratta Regulations**) in the references dated 5 September 2019 and 21 October 2019.
2. The questions arise under the Constitution (**Constitution**) of the Anglican Church of Australia (**Church**). In particular, the questions arise in relation to the doctrine of the Church and the Fundamental Declarations (**Fundamental Declarations**) and the Ruling Principles (**Ruling Principles**) of the Church.
3. In this submission, unless otherwise indicated or placed in inverted commas, the word *marriage* is used to mean the understanding of the term as historically taught and practised by Christian communities, and those countries that have implemented their matrimonial law based on that Christian worldview. This understanding existed in English common law and was enshrined in the *Marriage Act 1961* (Cth), prior to the 2017 amendments of that legislation, in the following terms:

marriage means the union of a man and a woman to the exclusion of all others, voluntarily entered into for life.

4. Quotations from translations of the canonical scriptures of the Old and New Testaments (**Scriptures**) in this submission are from the English Standard Version of the Bible published in 2001 by Crossway.

Summary of this submission

5. Re the reference dated 5 September 2019, question 1 should be answered “no” – the Wangaratta Regulations are NOT consistent with the Fundamental Declarations and Ruling Principles in the *Constitution of the Anglican Church of Australia*.
6. Re the reference dated 5 September 2019, question 2 should be answered “no” – the Wangaratta Regulations are NOT validly made pursuant to the *Canon Concerning Services 1992*.
7. Re the reference dated 21 October 2019, question 1 should be answered “no” – the use of the form of service at Appendix A to the Wangaratta Regulations to bless a civil marriage which involved a union other than between one man and one woman, is NOT consistent with the doctrine of this Church and NOT consistent with the Fundamental Declarations and Ruling Principles in the *Constitution of the Anglican Church of Australia*.
8. Re the reference dated 21 October 2019, question 2 should be answered “no” – 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 NOT consistent with the doctrine of this Church and NOT consistent with the Fundamental Declarations and Ruling Principles in the *Constitution of the Anglican Church of Australia*.

9. Re the reference dated 21 October 2019, question 3 should be answered “no” – the Wangaratta Regulations are NOT validly made pursuant to the *Canon Concerning Services* 1992.

The Wangaratta Regulations

10. The Wangaratta Regulations provide that:

Where a minister is asked to and agrees to conduct a Service of Blessing for persons married according to the Marriage Act 1961 the minister will use the form of service at Appendix A to these Regulations and no other form of service.

11. The service at Appendix A seeks God’s blessing on a couple who have entered a civil marriage under the Marriage Act 1961. This Act was amended by the Commonwealth of Australia Parliament in 2017 to redefine marriage as follows:

marriage means the union of 2 people to the exclusion of all others, voluntarily entered into for life.

Consequently, this service could purport to seek God’s blessing on a civil marriage that involved a union other than between one man and one woman.

12. The Wangaratta Regulations purport to be made pursuant to Section 5(2) of the *Canon Concerning Services* 1992.

The Appellate Tribunal’s jurisdiction

13. The Appellate Tribunal has jurisdiction under section 63(1) of the Constitution to hear and determine, or to give its opinion on, a question arising under the Constitution referred to it by the Primate.
14. During the discussions that led to the adoption of the Constitution, the position of the Appellate Tribunal was contentious. As to its purpose, the following views are of assistance:

The function of the tribunal is not to declare what in its opinion the faith, ritual, ceremonial or discipline ought to be, but what it is in the church.¹

A Bishop who has very definite views on some point of ecclesiastical opinions given in evidence before Tribunal ... it would be his duty to give a decision in accordance with [the existing position] and not in accordance with his own view if it differed.²

The constitution protects minorities who wish to retain the ‘status quo’ but not those who would embrace a variance.³

¹ W.S. Gee, ‘The Appellate Tribunal’, as quoted in John Davis, *Australia Anglicans & their Constitution*, Acorn Press, 1993, page 173.

² W.S. Gee, ‘The Appellate Tribunal’, as quoted in John Davis, *Australia Anglicans & their Constitution*, Acorn Press, 1993, page 174.

³ Kerrigan to McKie 6 August 1956, McKie Paper, as quoted in John Davis, *Australia Anglicans & their Constitution*, Acorn Press, 1993, page 174.

It must be a constitution which prevents the dragooning of minorities by triumphant majorities, while at the same time it does not countenance the frustration of majorities by intransigent minorities. It must also have safeguards which will prevent precipitate and hasty action and ensure that all will be done with due deliberation and mature thought.⁴

15. All the questions referred by the Primate to the Appellate Tribunal concern matters that arise under the Constitution.

- 15.1. Question 1 of the reference dated 5 September 2019 asks whether the Wangaratta Regulations are consistent with the Fundamental Declarations and Ruling Principles in the Constitution.

A question of consistency with the Fundamental Declarations and the Ruling Principles, which are in the Constitution, is a question that arises under the Constitution.

- 15.2. Questions 1 and 2 of the reference dated 21 October 2019 ask whether the Wangaratta Regulations, or 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, are consistent with the *doctrine* of this Church and consistent with the Fundamental Declarations and Ruling Principles in the Constitution.

A question of consistency with the Fundamental Declarations and the Ruling Principles, which are in the Constitution, is a question that arises under the Constitution.

The word *doctrine* is defined in section 74(1) of the Constitution as "the teaching of this Church on any question of *faith*". The terms *doctrine* and *faith* are therefore interrelated.

The Macquarie Dictionary defines *doctrine* as:

- a particular moral or religious principle taught or advocated.
- that which is taught; teachings collectively.
- a body or system of teachings relating to a particular subject.

The Macquarie Dictionary defines several meanings of *faith* including:

- belief in the doctrines or teachings of religion.
- the doctrines which are or should be believed.
- a system of religious belief: the Christian faith; the Jewish faith.

The Fundamental Declarations and the Ruling Principles declare that the Anglican Church of Australia:

"... holds the Christian Faith as professed by the Church of Christ..." (Fundamental Declarations, section 1)

⁴ T T Reed, 'Freedom and Rigidity' (1951), page 2. Reed papers, as quoted in John Davis, *Australia Anglicans & their Constitution*, Acorn Press, 1993, page 175.

"... receives all canonical scriptures of the Old and New Testaments as being the ultimate rule and standard of faith..." (Fundamental Declarations, section 2)

"... will ever obey the commands of Christ, teach His doctrine..." (Fundamental Declarations, section 3)

"... retains and approves the doctrine ..." (Ruling Principles, section 4)

declares an "authorised standard of worship and doctrine in this Church ..." (Ruling Principles, section 4)

The use of the terms *doctrine* and *faith* throughout the Fundamental Declarations and the Ruling Principles means a question of consistency with the *doctrine* (or *faith*) of this Church is a question of consistency with the Fundamental Declarations and the Ruling Principles. And a question of consistency with the Fundamental Declarations and the Ruling Principles, which are in the Constitution, is a question that arises under the Constitution.

- 15.3. Question 2 of the reference dated 5 September 2019 and Question 3 of the reference dated 21 October 2019 ask whether the Wangaratta Regulations are validly made pursuant to the *Canon Concerning Services 1992*.

Canon 5(3) of the *Canon Concerning Services 1992* provides that "all variations in forms of service and all forms of service ... must not be contrary to or a departure from the *doctrine* of this Church."

As set out above, *doctrine* is defined so as to make the term interrelated with *faith*, and each is used throughout the Fundamental Declarations and the Ruling Principles.

Thus, whether the Wangaratta Regulations are validly made pursuant to the *Canon Concerning Services 1992* becomes the question of whether the Wangaratta Regulations are "contrary to or a departure from the *doctrine* of this Church". That question in turn becomes the question of whether the Wangaratta Regulations are contrary to the Fundamental Declarations and the Ruling Principles. And a question of consistency with the Fundamental Declarations and the Ruling Principles, which are in the Constitution, is a question that arises under the Constitution.

16. Section 58(1) of the Constitution provides that the Appellate Tribunal, before determining "any matter involving doctrine upon which the members are not unanimous upon the point of doctrine", shall "obtain the opinion of the House of Bishops".

Anglican doctrine and faith

17. The Fundamental Declaration in section 3 of the Constitution provides that the Anglican Church of Australia will teach the *doctrine* of Jesus Christ. Section 74(1) of the Constitution defines *doctrine* as "the teaching of this Church on any question of faith".

18. The Fundamental Declaration in section 2 of the Constitution provides that “the ultimate rule and standard of faith given by inspiration of God” is the canonical scriptures of the Old and New Testaments. Section 74(1) of the Constitution defines “canonical scriptures” as “the canonical books as defined by the sixth of the Thirty-nine Articles.”
19. The Fundamental Declaration in section 1 of the Constitution makes a different and yet consistent declaration in relation to faith, specifically that the Anglican Church of Australia holds “the Christian Faith as professed by the Church of Christ”. This declaration is expressed in both the particular, i.e. “as set forth in the creeds known as the Nicene Creed and the Apostles’ Creed”, and in the general, i.e. “from primitive times”. As this is a single concept expressed in both the particular and the general, the particular provides guidance in understanding the general. Specifically, the Apostles’ Creed is not dated, but the Nicene Creed was finalised at the First Council of Constantinople in 381 AD. Accordingly if, as set out in the declaration, the Nicene Creed is a particular example of the “Christian Faith as professed by the Church of Christ in primitive times”, then the term “in primitive times” must be understood to extend at least until 381 AD. It is therefore instructive in questions of the doctrine and faith of the Anglican Church of Australia to consider the understanding of the Scriptures held by the Church Fathers, a position held in common with the English Reformers, such as:

19.1. Thomas Cranmer, Archbishop of Canterbury:

*Cranmer was a conservative reformer, and differed from those whose appeal was to Sola Scriptura: he took his stand on the Bible as interpreted by antiquity.*⁵

19.2. John Jewel, Bishop of Salisbury and author of *Apologia Ecclesiae Anglicanae* (The Apology for the Church of England).

*As for Cranmer before him, for Jewel the Fathers were not the fountainhead of original doctrine but the interpreters of that fountainhead which was Holy Scripture.*⁶

20. Further guidance is found within the work of Bishop Jewel:

20.1. The Apology for the Church of England was:

*... written in Latin to be read throughout Europe as the answer of the Reformed Church of England ... to those who said that the Reformation set up a new Church. Its argument was that the English Church Reformers were going back to the old Church, not setting up a new; and this Jewel proposed to show by looking back to the first centuries of Christianity.*⁷

20.2. With the Apology for the Church of England, Bishop Jewell wrote of the importance of Scripture. As evidence for that importance he drew upon the use of Scripture by the church in primitive times, such as Augustine (354 to 430 AD), Jerome (i.e. St Hierom as per the text below; 347 to 420 AD), Ambrose (340 to 397 AD):

⁵ Arthur Middleton, *Fathers and Anglicans*, MPG Books Limited, 2001, page 37.

⁶ Arthur Middleton, *Fathers and Anglicans*, MPG Books Limited, 2001, page 47.

⁷ *The Apology of the church of England, by John Jewel*, edited by Henry Morely, Introduction <<http://www.gutenberg.org/files/17678/17678-h/17678-h.htm>>.

With this sword did Christ put off the devil when He was tempted of him: with these weapons ought all presumption, which doth advance itself against God, to be overthrown and conquered. "For all Scripture," saith St Paul, "that cometh by the inspiration of God, is profitable to teach, to confute, to instruct, and to reprove, that the man of God may be perfect, and thoroughly framed to every good work."

Thus did the holy fathers always fight against the heretics with none other force than with the Holy Scriptures. St Augustine, when he disputed against Petilian, a heretic of the Donatists: "Let not these words," quoth he, "be heard between us, 'I say, or you say:' let us rather speak in this wise: 'Thus saith the Lord.' There let us seek the Church: there let us bould out our cause." Likewise St Hierom: "All those things," saith he, "which without the testimony of the Scriptures are holden as delivered from the Apostles, be thoroughly smitten down by the sword of God's word." St Ambrose also, to Gratian the emperor: "Let the Scripture," saith he, "be asked the question, let the prophets be asked, and let Christ be asked."

For at that time made the Catholic fathers and bishops no doubt but that our religion might be proved out of the Holy Scriptures. Neither were they ever so hardy as to take any for a heretic whose error they could not evidently and apparently reprove by the self-same Scriptures. And we verily do make answer on this wise, as St Paul did: "According to this way which they call heresy we do worship God, and the Father of our Lord Jesus Christ; and do allow all things which have been written either in the law or in the Prophets," or in the Apostles' works."⁸

21. The Ruling Principles also contain reference to *doctrine*. Section 4 of the Constitution provides that the Anglican Church of Australia:
 - 21.1. "retains and approves the doctrine and principles of the Church of England embodied in the Book of Common Prayer ... and in the Articles of Religion sometimes called the Thirty-nine Articles...";
 - 21.2. may alter its practice, provided that alteration is "consistent with the Fundamental Declarations contained herein..."; and
 - 21.3. declares that "the above-named Book of Common Prayer, together with the Thirty-nine Articles, be regarded as the authorised standard of worship and doctrine in this Church, and no alteration in or permitted variations from the service or Articles therein shall contravene any principle of doctrine or worship laid down in such standard."
22. Accordingly, the Ruling Principles contained in section 4 of the Constitution set out that a standard for the doctrine of the Anglican Church of Australia can be found in the Book of Common Prayer and the Articles of Religion. Finally, the Ruling Principles in section 4 require that any variation to services shall be consistent with the Fundamental Declarations. Thus, Anglican Archdeacon Emeritus John Davis observed (emphasis added):

⁸ *The Apology of the church of England, by John Jewell*, edited by Henry Morely, pages 26-27
<<http://www.gutenberg.org/files/17678/17678-h/17678-h.htm>>.

*'Plenary authority' is taken (in section 4) to make numerous changes including liturgical revision, **but these changes must conform with the Fundamental Declarations and constitutional procedure.** The Book of Common Prayer together with the 39 Articles is 'the authorised standard of worship and doctrine'. Provision is made for liturgical change, **provided there is no contravention of 'any principle or doctrine or worship' in the formularies.** Section 4 does however open up the possibility of a multiplicity of diocesan usages.⁹*

Scripture and the nature of marriage

23. A central issue in all the questions referred to the Appellate Tribunal for determination is whether any form of service purporting to bless a civil marriage involving a union other than between one man and one woman is consistent with the teaching of the Scriptures.

Marriage is the union of a man and a woman

24. The Lord Jesus Christ addressed the nature of marriage in Matthew 19:4-5 saying:

Have you not read that he who created them from the beginning made them male and female, and said, 'Therefore a man shall leave his father and his mother and hold fast to his wife, and the two shall become one flesh'?

The scriptures referred to by Jesus were Genesis 1:27:

So God created man in his own image, in the image of God he created him; male and female he created them.

and Genesis 2:24:

Therefore a man shall leave his father and his mother and hold fast to his wife, and they shall become one flesh.

In saying this, Jesus declares (among other things) that marriage is between a male and a female. Further, this is not a new teaching, but one grounded in God's perfect creation, before the advent of sin. Thus, from the beginning, marriage forms part of God's created order and brings together as "one flesh" the sexually dimorphic man and woman.

25. The only other type of marriage recorded in the Scriptures is polygynous marriage, such as the relationships of Jacob, King David and King Solomon.

25.1. Although each of these men enjoyed great favour from God, it would be wrong to conclude that God's favour represents divine endorsement of all their actions. Jacob stole from his brother; David committed adultery and murder; and Solomon engaged in idolatry. These examples, of theft, adultery, murder and idolatry, are all clearly forbidden by the Ten Commandments.

⁹ John Davis, *Australian Anglicans and their Constitution*, Acorn Press, 1993, page 176.

- 25.2. In Jewish understanding, while the Torah does not forbid polygamy, it never endorses the practice. The examples of biblical figures who wedded more than one wife are considered to have done so for specific reasons. Rabbi Gershom Ben Judah (960-1040):

... best known for his important 'Takkanoth' (laws) dealing with social and family life, which he enacted with the approval of the Rabbinical authorities of his time, and which were accepted by all the Jews of Europe, "as if they were given on Mount Sinai." Among these Takkanoth the most well known [is] the prohibition of polygamy.¹⁰

- 25.3. The instances of polygyny in the Old Testament are best understood as a description of events as they occurred, and not an endorsement of polygamous marriage. Jesus treated some Old Testament practices in this manner (Mark: 10:4-9):

[The Pharisees] said, "Moses allowed a man to write a certificate of divorce and to send her away." But Jesus said to them, "Because of your hardness of heart he wrote you this commandment. But from the beginning of creation, 'God made them male and female.' 'Therefore a man shall leave his father and mother and hold fast to his wife, and the two shall become one flesh.' So they are no longer two but one flesh. What therefore God has joined together, let not man separate."

Thus, when Jesus acknowledged the Old Testament method of divorce, he did not endorse that practice. The Old Testament practice arose in the context of the sinful world, but Jesus called those who would follow him to marriage as created by God prior to the Fall.

- 25.4. Additionally, the Anglican Church of Australia is obliged to reject the practice of polygamy, given Article XX of the Thirty-nine Articles that states in part:

... 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 be repugnant to another.

26. Accordingly, only two understandings of marriage exist in the Old Testament:

- Polygynous marriage, which is not part of God's created order but rather arose in the context of sin. The inclusion of polygyny in the Old Testament is a description of events, not a prescription for the practice of the church.
- Marriage that God created before sin entered the world, which is the exclusive union of one man and one woman for life. This is the concept of marriage to which Jesus calls those who would follow him.

¹⁰ Naftali Silberberg, "Does Jewish Law Forbid Polygamy?", Chabad.org, retrieved 9 December 2019.

27. Understandably, marriage is not mentioned in the creeds of the early church, which addressed matters that were contentious at the time. Marriage was not contentious then. Where marriage is mentioned in the writings of the early church fathers, it is always understood as the union of a man and a woman. For example, in the letter of Ignatius (bishop of Antioch, estimated 50 AD to early 100s AD) to Polycarp (bishop of Smyrna, estimated 60 AD to 155 AD) Ignatius writes:

*Tell my sisters to love the Lord and to be altogether contented with their husbands. Similarly urge my brothers in the name of Jesus Christ "to love their wives as the Lord loves the Church."*¹¹

28. In summary, the Scriptures, as understood both now and by the Church of Christ in primitive times, are clear that marriage, as created by God, is between one man and one woman for life.

Marriage reflects the union of Christ and his church

29. Jesus referred to himself as the bridegroom, for example in Matthew 9:15, Mark 2:19 and Luke 5:34. The marriage of Christ and his church, the bridegroom and his bride, is anticipated with great joy in Revelation 19:7 and 21:2,9.

The apostle Paul refers to the union of a man and his wife in marriage as a profound mystery reflecting the union of Christ and the church (Ephesians 5:31-32).

These references to the union of Christ and his church at the culmination of history portray marriage as an asymmetrical bond. This cannot be represented by same-sex relationships.

Same-sex unions are condemned by God

30. Not only are same-sex relationships incapable of expressing the male-female order of God's creation, sexual relations between people of the same sex are specifically condemned in the Scriptures.

- 30.1. The following passages, for example, condemn homosexual activity as abominable, dishonourable and unrighteous, and a bar to inheriting the kingdom of God:

You shall not lie with a male as with a woman; it is an abomination. (Leviticus 18:22)

If a man lies with a male as with a woman, both of them have committed an abomination. (Leviticus 20:13)

God gave them up to dishonourable passions. For their women exchanged natural relations for those that are contrary to nature; and the men likewise gave up natural relations with women and were consumed with passion for one another, men committing shameless acts with men and receiving in themselves the due penalty for their error. (Romans 1:26–27)

¹¹ "Letter to the to the Polycarp", Order of St. Ignatius of Antioch, Antiochian Orthodox Christian Archdiocese, translated by Cyril Richardson, <<https://www.orderofstignatius.org/polycarp>>.

Do you not know that the unrighteous will not inherit the kingdom of God? Do not be deceived: neither the sexually immoral, nor idolaters, nor adulterers, nor men who practice homosexuality ... will inherit the kingdom of God. (1 Corinthians 6:9-10)

Jesus includes homosexual behaviour among several activities that defile a person:

Out of the heart come evil thoughts, murder, adultery, sexual immorality, theft, false witness, slander. These are what defile a person. (Matthew 15:19–20)

The Greek word translated here as “sexual immorality” is *porneiai*, which refers to any kind of extramarital, unlawful or unnatural sexual intercourse, including homosexual activity, according to Friberg's *Analytical Lexicon to the Greek New Testament*.¹²

- 30.2. The condemnation of homosexual activity in the Scriptures was reinforced by the early church.

For example, Athenagoras the Athenian, a 2nd century philosopher and Christian, writes in his letter to Roman emperors and conquerors:

*[T]hose who have set up a market for fornication and established infamous resorts for the young for every kind of vile pleasure – who do not abstain even from males, males with males committing shocking abominations, outraging all the noblest and comeliest bodies in all sorts of ways, so dishonouring the fair workmanship of God.*¹³

Tertullian (160-225) in his treatise *On Modesty* writes in defence of Christian chastity. After condemning adultery, he clearly shows the church's horror for sins against nature:

*But all the other frenzies of passions – impious both toward the bodies and toward the sexes – beyond the laws of nature, we banish not only from the threshold, but from all shelter of the Church, because they are not sins, but monstrosities.*¹⁴

Eusebius Pamphili (260-341), Bishop of Caesarea in Palestine and the “Father of Church History”, writes in his book *Demonstratio Evangelica* (quoting Leviticus 18:2-5,24) that God, in the Law given to Moses:

*having forbidden all unlawful marriage, and all unseemly practice, and the union of women with women and men with men ... adds: "Do not defile yourselves with any of these things".*¹⁵

¹² Cited in the Wikipedia entry on “Fornication”.

¹³ Athenagoras the Athenian, “A Plea for the Christians”, ch. 34, tr. B P Pratten, New Advent, <<http://www.newadvent.org/fathers/0205.htm>>.

¹⁴ Tertullian, *On Modesty*, ch. 4, tr. S Thelwall, New Advent, <<http://www.newadvent.org/fathers/0407.htm>>.

¹⁵ Eusebius of Caesarea, *Demonstratio Evangelica*, Church History Book 4, ch. 10, tr. W J Ferrar, <www.earlychristianwritings.com/fathers/eusebius_de_06_book4.htm>.

- 30.3. Clearly, the Scriptures and early church consistently teach that any sexual union other than between a married man and woman is condemned by God and that anyone engaging in such activity is excluded from inheriting the kingdom of God.

Things necessary for salvation

31. The matters on which the second Fundamental Declaration affirms the Scriptures as the ultimate rule and standard of faith are “things necessary for salvation”.

In the New Testament, “salvation” is often described using phrases such as “entering the kingdom of God” or “having eternal life”. For example, in Matthew 19:16-25, a rich young man asked Jesus what he needed to do to “have eternal life”. Later, when discussing the incident with his disciples, Jesus “said how hard it is for a rich person to enter the kingdom of God” (Matthew 19:16). The astonished disciples then asked: “Who then can be saved?” Jesus and his disciples clearly considered the terms “salvation”, “having eternal life” and “entering the kingdom of God” as essentially synonyms.

When Paul writes (1 Corinthians 6:9–10) that “neither the sexually immoral, nor idolaters, nor adulterers, nor men who practise homosexuality ... will inherit the kingdom of God”, he is saying that avoiding these things – including homosexual activity – is necessary for salvation. Consequently, the need to avoid homosexual activity is one of the matters on which the Scriptures are the ultimate rule and standard of faith, according to the second Fundamental Declaration.

Summary

32. **According to the Scriptures, marriage can only be between a man and a woman. Only the asymmetric marital bond of a man and a woman can portray the union of Christ and his church. Any other sexual union between two people is not marriage, is condemned by God, excludes inheritance of the kingdom of God and is therefore contrary to the Fundamental Declarations.**

Scripture and the purposes of marriage

33. According to the Scriptures, marriage has three main purposes: procreation and raising the next generation, complementary partnership, and avoidance of sexual immorality. These purposes are consistent with the findings of social, psychological and neurological research on human needs and behaviour. These purposes are best fulfilled in accordance with God’s design for creation and his commandments to those who would follow him, through the exclusive and enduring union of a man and a woman, namely marriage.

A purpose of marriage: conceiving, bearing and raising children

34. When Jesus spoke about marriage in Matthew 19:4 he was quoting Genesis 1:27. The following verse sets out a central purpose of marriage, namely in Genesis 1:28:

And God blessed them. And God said to them, “Be fruitful and multiply and fill the earth and subdue it...”

Thus, a core purpose of marriage in God's creation order, as the sexual union of a man and his wife, is to conceive children and thereby be "fruitful and multiply".

35. This purpose, to be "fruitful and multiply", is also expressed in Jeremiah's letter to the exiles in Babylon – Jeremiah 29:6:

Take wives and have sons and daughters; take wives for your sons, and give your daughters in marriage, that they may bear sons and daughters; multiply there, and do not decrease.

36. The purpose to be "fruitful and multiply" extends well beyond conception, to bearing and raising children to become the next generation of godly adults. This is clear from the prophet Malachi who calls men to be faithful to the wife of their youth. Why? To raise "godly offspring" – Malachi 2:15 (emphasis added):

*Did he not make them one, with a portion of the Spirit in their union? And **what was the one God seeking? Godly offspring.** So guard yourselves in your spirit, and let none of you be faithless to the wife of your youth.*

Producing godly offspring involves a long-term commitment of a husband and wife to each other in order to provide loving care and training of their children until adulthood and beyond.

37. The purpose of marriage in the bearing and raising of children was professed by the Church of Christ in primitive times, as the following examples show.

- 37.1. Irenaeus, Bishop of Lyon (around 120 to 200 AD), defends God's purpose of marriage as taught in the Scriptures and condemns "the inventors of any sort of opinion which they may have been able to call into existence" who:

preached against marriage, thus setting aside the original creation of God, and indirectly blaming Him who made the male and female for the propagation of the human race.¹⁶

- 37.2. John Chrysostom, Bishop of Constantinople (347 to 407 AD), affirms the teaching of Scripture on marriage in the Paul's letter to the Ephesians:

For there is nothing which so welds our life together as the love of man and wife ... because when [husbands and wives] are in harmony, the children are well brought up, and the domestics are in good order, and neighbours, and friends, and relations enjoy the fragrance.¹⁷

38. Same-sex unions cannot (naturally) procreate children. Consequently, such unions cannot (naturally) fulfil this purpose of marriage. Furthermore, obtaining a child through artificial means intentionally deprives the child of either a mother or a father, which can be detrimental to the child's development and sense of identity.

¹⁶ Irenaeus, Bishop of Lyon, *Against Heresies*, Book 1, Chapter 28, <<http://www.newadvent.org/fathers/0103128.htm>>.

¹⁷ John Chrysostom, Bishop of Constantinople, *Homily 20 on Ephesians*, <<http://www.newadvent.org/fathers/230120.htm>>

39. As set out in Scriptures and professed by the early church, God's created order intended the conceiving, bearing and raising of children to occur within marriage: the exclusive and enduring union of a man and a woman. Accordingly, this function is one of the purposes of marriage.

A purpose of marriage: complementary partnership of a man and a woman

40. When speaking about marriage, Jesus quoted Genesis chapter 2. A little earlier in that chapter the purpose of complementary partnership is mentioned:

Then the Lord God said, "It is not good that the man should be alone; I will make him a helper fit for him." (Genesis 2: 18)

The implication is that, while men and women are equally created in God's image (Genesis 1:27), men are prone to suffering loneliness and God addressed this by providing female companionship – in a complementary relationship. Significantly, research on loneliness has found that "unmarried men showed higher levels of loneliness than unmarried women" and "widowers were lonelier than widows".¹⁸

41. The apostle Paul expands on the complementary relationship between husbands and wives in his letter to the Ephesians (5:22-33), likening the marriage relationship to that between Christ and his church. He concludes with the exhortation:

Let each one of you love his wife as himself, and let the wife see that she respects her husband. (Ephesians 5:33)

Paul here affirms that, in creating men and women equal but different, God's purpose was to enable them to complement each other in marriage to the benefit of both.

42. Abundant evidence is available of the universal physical, neurological and psychological differences between men and women, for example in *The Psychology of Sex Differences*.¹⁹ Current research confirms the neurological basis of these differences:

*Recent studies indicate that gender may have a substantial influence on human cognitive functions, including emotion, memory, perception, etc. Men and women appear to have different ways to encode memories, sense emotions, recognize faces, solve certain problems, and make decisions.*²⁰

These commonly observed differences were popularised in John Gray's bestseller: *Men Are from Mars, Women Are from Venus: A Practical Guide for Improving Communication and Getting What You Want in Your Relationships*.²¹ The complementary natures of men and women can contribute a vitality to a marital relationship not present in other relationships.

¹⁸ Martin Pinquart, "Loneliness in Married, Widowed, Divorced, and Never-Married Older Adults", *Journal of Social and Personal Relationships*, 1 February 2003.

¹⁹ Eleanor Maccoby and Carol Jacklin, *The Psychology of Sex Differences*, Stanford University Press, 1974.

²⁰ Jiang Xin, et al., "Brain Differences Between Men and Women: Evidence from Deep Learning", *Frontiers in Neuroscience*, 8 March 2019.

²¹ John Gray, *Men Are from Mars, Women Are from Venus: A Practical Guide for Improving Communication and Getting What You Want in Your Relationships*, HarperCollins, 1 January 1992.

43. The Russian existentialist philosopher Nicholas Berdyaev suggested that loneliness occurs because, deep down, we all realise that neither a man by himself nor a woman by herself is biologically completely human. Each lacks the attributes and capabilities of the opposite sex and, in that sense, each is incomplete – and lonely – without the other.²²

Homosexual relationships seemingly fail to satisfy this deep longing, as indicated by the significantly higher divorce rates among same-sex unions, compared with male-female marriages.²³

44. Parents need to provide a stable loving environment for their children to thrive. They also need to be role models of manhood and womanhood, so their children can develop into mature men and women.

Same-sex partnerships are less able to provide a stable loving environment for any children in their care. Males and females who engage in homosexual activity have much higher rates of interpersonal maladjustment, depression, conduct disorder, domestic violence, alcohol or drug abuse, anxiety, and dependency on psychiatric care than heterosexuals.²⁴ A recent survey of sexuality and mental health outcomes concluded:

*Compared to the general population, non-heterosexual subpopulations are at an elevated risk for a variety of adverse health and mental health outcomes.*²⁵

These are risk factors for dependent children.

45. The evidence is that the risks are real. An important study of primary school children living in three family types – married heterosexual couples, cohabiting heterosexual couples and homosexual couples – indicates that children raised by same-sex couples may be at risk of academic under-achievement, social problems and gender confusion.²⁶

Even more worrying are indications of an increased incidence of incest between minor children and homosexual parents of both sexes.²⁷

²² Nicholas Berdyaev, *Freedom and the Spirit*, Freeport, NY: Libraries Press, 1972.

²³ Gunnar Andersson, Turid Noack, Ane Seierstad and Harald Weedon-Fekjær, "The Demographics of Same-Sex 'Marriages' in Norway and Sweden", in Marie Digoix and Patrick Festy (eds), *Same-sex Couples, same-sex Partnerships, and Homosexual Marriages: A Focus on Cross-National Differentials*, no 124, 2004, 247-264.

²⁴ R. Herrell *et al.*, "Sexual Orientation and Suicidality: A Co-twin Control Study in Adult Men", *Archives of General Psychiatry*, 56, 1999, 867-74; D. M. Fergusson *et al.*, "Is Sexual Orientation Related to Mental Health Problems and Suicidality in Young People?" *Archives of General Psychiatry*, 56, 1999, 876-80; M. J. Bailey, "Homosexuality and Mental Illness," *Archives of General Psychiatry*, 56, 1999, 883-4.

²⁵ Lawrence S. Mayer and Paul R. McHugh, "Sexuality and Gender: Findings from the Biological, Psychological, and Social Sciences", *The New Atlantis*, Fall 2016.

²⁶ S. Sarantakos, "Children in three contexts", *Children Australia*, vol 21, no 3, 1996.

²⁷ P. Cameron and K. Cameron, "Homosexual Parents", *Adolescence*, 1996, 31(124), 757-66; P. Cameron and K. Cameron, "Homosexual Parents: A Comparative Forensic Study of Character and Harms to Children", *Psychological Reports*, 82 (1998): 1155-91.

46. The evidence is that God's provision of marriage to unite a man and a woman in a complementary partnership is intended as a blessing for both them and their children. Ultimately the love between married parents and their children is intended as a blessing for the nation of which they are part, as the apostle Paul reminds us in Ephesians 6:2.

A purpose of marriage: avoiding sexual immorality

47. In his first letter to the Corinthians, the apostle Paul addresses some questions of sexual morality. Should Christians be complete ascetics and eschew all sexual relations? Should the unmarried and widows remain single and should husbands and wives abstain from coitus?

Paul's answer is, "No." While commending singleness, he is more concerned about the temptation to engage in sexual immorality. Asceticism is not a Christian obligation. Marriage between a man and a woman is permissible and so are sexual relations within marriage. The priority is to avoid yielding to the temptation of sexual relations outside (male-female) marriage.

But because of the temptation to sexual immorality, each man should have his own wife and each woman her own husband. The husband should give to his wife her conjugal rights, and likewise the wife to her husband. (1 Corinthians 7:2–3)

To the unmarried and the widows I say that it is good for them to remain single, as I am. But if they cannot exercise self-control, they should marry. For it is better to marry than to burn with passion. (1 Corinthians 7:8-9)

In short, avoiding sexual immorality is a purpose of (male-female) marriage.

48. Those who engage in homosexual activity, both male and female, may argue that they should be entitled to same-sex "marriage" for a similar reason: to avoid yielding to the temptation of promiscuity.

However, this argument by analogy is invalid. There is a vast difference between allowing (male-female) marriage, which the Scriptures say is to be honoured by all (Hebrews 13:4), and endorsing same-sex partnerships, which the Scriptures condemn (as detailed above).

49. Moreover, if this argument by analogy were accepted, it could easily be extended using the same logic to other situations.

- What about married men and women who are tempted to engage in extra-marital affairs? Should adultery or polygamy be accepted?
- What about adults who are sexually attracted to minors? Should paedophilia or child "marriage" be accepted?
- What about people who are sexually attracted to close relatives? Should incest or consanguineous "marriage" be accepted?

People experiencing these immoral temptations are called to reject the temptations and remain chaste – and so are those who experience same-sex attraction.

50. When considering questions of sexuality, it is important to distinguish between attraction, identity and activity.

- **Attraction** of a sexual nature outside marriage, whether same-sex or opposite-sex, is a form of temptation to commit evil – and from which we pray to be delivered in the Lord’s Prayer. Temptation in itself is not a sin. Jesus was tempted in the wilderness by the devil, yet he was without sin. However, a person can give into temptation through entertaining (rather than rejecting) sinful desires, even if no action has been taken to further such desires.²⁸ The critical question is how we respond to temptation. We are called to reject temptation, as Jesus did in the wilderness.
- **Identity** is how we understand and describe ourselves. The Catechism in the Book of Common Prayer answers the question of how Christians should understand themselves: “I was made a member of Christ, the child of God, and an inheritor of the kingdom of heaven.” A person who is tempted to steal, but doesn’t, is not a thief and should not identify as a thief. Someone who is tempted to commit adultery, but doesn’t, is not an adulterer. Likewise, a person who experiences same-sex attraction, but remains chaste, is not and should not identify as a homosexual.
- **Activity** of a sexual nature outside marriage, whether same-sex or opposite-sex, is what Paul calls “sins against his (or her) own body” (1 Corinthians 6:18). When he calls believers to “flee from sexual immorality”, he is referring to the bodily sins of fornication, adultery and homosexual practice.

51. Claims are frequently made that people are born either gay or straight, famously by Lady Gaga in her song *Born This Way*.²⁹ Such a claim was made about some gay students at “Churchie”, the Anglican Church Grammar School in Brisbane, by Rev Anne James of the Metropolitan Community Church. She said:

*These are kids that were born gay, they didn't choose it, they're not choosing to be contrary to the norm, or anything like that. They were born gay, just as much as people are born left-handed or they're born with curly hair or something like that.*³⁰

The idea that homosexuals are “born that way” and that there is a “gay gene” has become a modern myth, widely believed in academic and media circles. But what is the evidence?

52. Researchers Bearman and Bruckner at Columbia and Yale Universities comment that “social scientists and geneticists alike stress the obvious point that neither genes, nor hormones, nor specific social situations determine sexual behaviour by themselves. Rather, the extent to which same-sex and opposite-sex desires are expressed in the individual is seen to be a complex interplay of biological, social, and situational factors.”³¹

²⁸ See Matthew 5:27-28; Book of Common Prayer, form of confession (emphasis added) “*Almighty God, Father of our Lord Jesus Christ, Maker of all things, Judge of all men; We acknowledge and bewail our manifold sins and wickedness, Which we, from time to time, most grievously have committed, By thought, word, and deed...*” <<http://justus.anglican.org/resources/bcp/1662/HC.pdf>>

²⁹ “Born This Way (song)”, Wikipedia.

³⁰ Matt Wordsworth, “‘Churchie’ embroiled in anti-discrimination row”, *ABC News*, 14 April 2008

³¹ P S Bearman and H Bruckner, 2002, “Opposite-sex twins and adolescent same-sex attraction”, *American Journal of Sociology*, Vol 107, pp 1179–1205.

Distinguished scholars Lawrence Mayer and Paul McHugh at Johns Hopkins University School of Medicine, in a survey of findings from the biological, psychological and social sciences on sexuality and gender, say:

*The understanding of sexual orientation as an innate, biologically fixed property of human beings – the idea that people are “born that way” – is not supported by scientific evidence.*³²

Human behaviour is complex. Humans are not robots. There is no single gene governing sexual preference or any other preference. There is no gene for smoking, dancing or making sarcastic remarks.³³

53. Some of the most important insights into the relative influence of genes and social environment on behaviour – nature and nurture – have come through twin studies. Such studies generally look for three kinds of influence: genetic (heritability), shared environment (family influence) and unique environment (chance or choice).

To produce robust results, twin studies need to be large-scale and use random samples. Three robust studies in recent years have addressed the question of same-sex attraction: Bailey,³⁴ Långström³⁵ and Burri.³⁶ All three studies found that the dominant influence on same-sex attraction is not genes, but unique life experiences.

54. One of the strongest arguments against homosexuality as an inborn, unalterable condition is change in sexual orientation. Scientific literature shows that sexual orientation is not fixed but fluid. People change between homosexual and heterosexual orientation to a surprising degree in both directions, but a far greater proportion of homosexuals become heterosexual than heterosexuals become homosexual. Some of the change is therapeutically assisted, but in most cases it appears to be circumstantial. Life itself can bring along the factors that make the difference.

³² Lawrence S. Mayer and Paul R. McHugh, "Sexuality and Gender: Findings from the Biological, Psychological, and Social Sciences", *The New Atlantis*, Fall 2016.

³³ Neil E and Briar K Whitehead, 2010, *My Genes Made Me Do It! A Scientific Look at Sexual Orientation*, (Lower Hutt, NZ, Whitehead Associates); available at: <<http://www.mygenes.co.nz/>>.

³⁴ J Michael Bailey, *et al.*, 2000, "Genetic and Environmental Influences on Sexual Orientation and Its Correlates in an Australian Twin Sample", *Journal of Personality and Social Psychology*, Vol 78, No 3, pp 524-536.

³⁵ Niklas Langstrom, *et al.*, 2010, "Genetic and Environmental Effects on Same-sex Sexual Behavior: A Population Study of Twins in Sweden", *Archives of Sexual Behavior*, Vol 39, pp 75-80.

³⁶ A Burri, *et al.*, 2011, "Genetic and Environmental Influences on Female Sexual Orientation, Childhood Gender Typicality and Adult Gender Identity", *PLoS ONE*, Vol 6, Issue 7, e21982.

55. Several researchers have reported major spontaneous changes in sexual attraction and behaviour over time. For example, a study of Dutch adult males found that, of those who had experienced same-sex attraction at some stage of their lives, about half reported those feelings disappeared later in life.³⁷ And a New Zealand cohort study found that one half of females and one third of males with occasional same-sex attraction at 21 years had only opposite-sex attraction as 26-year-olds.³⁸ Clearly, a third to a half of same-sex attracted young adults find themselves attracted to the opposite sex later in life.
56. Sexual attraction is particularly unstable in adolescents. US longitudinal research on adolescent health, using large-scale surveys of 16, 17 and 22 year-olds, revealed major changes in romantic attraction and sexual behaviour between these ages.³⁹ Of the boys who identified at 16 years as same-sex attracted, 72% were opposite-sex attracted by the age of 22 years – they had “discovered” girls. And of the same-sex attracted girls at 16 years, 55% were opposite-sex attracted by 22.

If the US results on changes between the ages of 16 and 22 years are combined with the New Zealand changes between 21 and 26 years, some 80% of same-sex attracted teenage boys and girls become opposite-sex attracted as adults a decade or so later. The common claim that sexual attraction is unchangeable is a myth.

57. The following personal stories of men and women who have left a homosexual lifestyle behind provide some insights into the fluidity of sexual attraction.

- **Michael Glatze**, founder of Young Gay America and editor of its magazine, was a leading “gay rights” activist for ten years. He became aware of homosexual feelings at about the age of 14 and publicly declared himself “gay” at age 20. But he left the homosexual community at the age of 30 after experiencing a mysterious inner conflict.

“‘Coming out’ from under the influence of the homosexual mindset was the most liberating, beautiful and astonishing thing I’ve ever experienced in my entire life,” Glatze said. “Homosexual sex is entirely ‘lust-based’ and can never fully satisfy. It’s a neurotic process rather than a natural, normal one.”⁴⁰

- **Charlene Cothran** had been a lesbian activist for three decades. She had published *Venus* magazine for 13 years – with a circulation climbing to 38,000 among the US black homosexual and lesbian community. After she became a Christian and turned her back on lesbianism, Charlene gave her magazine a new mission “to encourage, educate and assist those who desire to leave a life of homosexuality.”⁴¹

³⁷ T G M Sandfort, 1997, “Sampling male homosexuality”, in J. Bancroft (Ed.), *Researching sexual behavior: Methodological issues*, pp 261–275 (Bloomington, IN: Indiana University Press).

³⁸ N Dickson, C Paul, and P Herbison, 2003, “Same-sex attraction in a birth cohort: Prevalence and persistence in early adulthood”, *Social Science & Medicine*, Vol 56, pp 1607–1615.

³⁹ Ritch C Savin-Williams and L Ream Geoffrey, 2007, “Prevalence and stability of sexual orientation components during adolescence and young adulthood.” *Archives of Sexual Behavior*, Vol 36, Issue 3, pp 385–394.

⁴⁰ Art Moore, “‘Gay’-rights leader quits homosexuality”, *WND*, 3 July 2007.

⁴¹ Amy Tracy, “The Rebirth of Venus”, *Christianity Today*, 23 March 2007.

- **Dr Lisa Diamond**, associate professor in psychology and gender studies at the University of Utah has done a longitudinal study of 80 same-sex-attracted females and found that after five years one quarter no longer identified as lesbian or bisexual.

She says there is considerable anecdotal evidence that some lesbians have changed their orientation. "In many college communities, women that come out as lesbian during their college years, only to drop this identification after graduating, are jokingly called 'LUGs' – Lesbians Until Graduation," she says.⁴²

- **Luca di Tolve** was once a young homosexual man but is now a happily married father. His true story was told by Italian pop star Guiseppe Povia, who also once had "a gay phase" that lasted seven months. Povia's soft rap song "Luca era gay" (*Luke was once gay*) hit the headlines after coming second in the 2009 San Remo Music Festival in Italy.

Luca told his story to the Italian newspaper *Il Giornale*. He explained that people develop same-sex attractions because of experiences during childhood. For Luca, a key factor was his parents' divorce. His father left home and young Luca "remained alone in a feminine environment, playing with dolls". Luca later came to understand that his emotionally detached father and obsessive mother had unintentionally created confusion about his sexual identity.⁴³

- **James Parker** was adopted and grew up in northern England. There he was sexually abused by teachers and an older boy, became addicted to pornography and alcohol, and "came out" as homosexual to his parents at the age of 17. After moving to London to attend university, he lived a promiscuous gay lifestyle – until he met a man who became his steady partner.

After attending a Catholic prayer meeting, he experienced a profound spiritual awakening and ended his same-sex relationship. Through a painful journey he found for the first time a strong sense of masculinity. He knows people who have grown into a life of chastity but still experience levels of same-sex attraction.

James discovered an attraction to the opposite sex. After moving to Perth, he eventually married and became a father. "I've lived the committed homosexual and committed heterosexual partnerships – they're radically different," he says.⁴⁴

- **Jackie Hill Perry** used to be a lesbian. In her book *Gay Girl, Good God*, she tells of growing up fatherless and experiencing gender confusion. She embraced masculinity and homosexuality passionately.⁴⁵ She knew that conflicted with Christian teaching. But she felt unable to stop loving women, when homosexuality felt more natural to her than heterosexuality.

⁴² Lisa Diamond, "Was It a Phase? Young Women's Relinquishment of Lesbian/Bisexual Identities Over a 5-Year Period", *Journal of Personality and Social Psychology*, Vol 84, No 2, 2003, 352-364.

⁴³ Michael Cook, "Luca era gay", *Mercatornet*, 11 October 2012.

⁴⁴ Ben Smith, "James Parker: 'From Gay-Activist to Husband and Father'", *Catholic Outlook*, 19 May 2016.

⁴⁵ Jackie Hill Perry, *Gay Girl, Good God: The Story of Who I Was, and Who God Has Always Been*, B&H Publishing Group, 3 September 2018.

At age nineteen, Jackie came face-to-face with what it meant to be made new. God turned her heart toward Him – not in a church, or through contact with Christians – but in her own bedroom.

- **Rosaria Butterfield** was a tenured English professor at Syracuse University, specialising in Queer Theory, a postmodern form of gay and lesbian studies. Aged 36 and sceptical of all things Christian, she was in a committed lesbian relationship and was deeply involved in the LGBT (Lesbian Gay Bisexual Transgender) community.

One day, Rosaria wrote an editorial in the local newspaper criticising a Christian ministry. Pastor Ken Smith wrote a kind and probing letter in response – and so began a friendship that changed Rosaria's life, eventually leading to her Christian conversion.

In her book, *Secret Thoughts of an Unlikely Convert*, Rosaria outlines the challenges she faced during her journey of repentance and transformation.⁴⁶

Slowly but steadily, her feelings about herself as a woman and her sexuality started to change. Over time, she fell in love with a pastor. She married him and is now a home-schooling mother of four adopted children.

- **Nick Kuiper** was bullied as a child and didn't know how to handle it. His family had migrated from Holland when he was four and he was closest to his mother. His father's hearing was badly damaged during the war and he had little English, making communication with him very difficult. Nick says:

I left home at 17 and was often lonely. A hippie who befriended me introduced me to a hotel where the people were very caring and accepted me. They were homosexuals.

I looked for a lifelong partner, but I quickly learnt that there is a great instability in the homosexual scene. The percentage of long-term relationships is very small.

Two Christian women befriended me, and I developed a real hunger for the Word of God. At that time, I also found out my homosexual partner had been unfaithful to me. I was devastated.

One night, I read that homosexuality was an abomination to God. I suddenly knew that it was sin. I heaved sobs of repentance before the Lord. I had started attending church and was very lonely, but over the next three years my love for the Lord eventually overcame my desire for homosexual relationships.

I am now free from the grip of homosexuality, but I have to walk daily in the life of the Spirit. I am now married, and my wife and I have been blessed with two sons.⁴⁷

⁴⁶ Rosaria C. Butterfield, *The Secret Thoughts of an Unlikely Convert: An English Professor's Journey into Christian Faith*, Crown & Covenant Publications, 2012; see also Tony Reinke, "From Radical Lesbian to Redeemed Christian", *DesiringGod.org*, 19 February 2013.

⁴⁷ *Australia's New Day*, June 1986.

58. The evidence is that some involved in homosexual activity do change. This was also true in the first century, as is clear from the apostle Paul's first letter to the Corinthians, where he writes (emphasis added):

*Do not be deceived: neither the sexually immoral, nor idolaters, nor adulterers, nor men who practise homosexuality ... will inherit the kingdom of God. And **such were some of you**. 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. (1 Corinthians 6:9-11)*

Some members of the Corinthian church had engaged in homosexual practices but had changed: they had been washed, sanctified and justified by Christ.

That is still true today. Some who previously engaged in homosexual practices have changed and are now either celibate or married (to an opposite-sex partner).

Doctrine Commission "common ground"

59. In the Foreword to the book *Marriage, Same-Sex Marriage and the Anglican Church of Australia*, the Doctrine Commission members report finding some initial "common ground".⁴⁸ While some of these statements are acceptable, others should not go unchallenged.
60. The Doctrine Commission members report "common ground":

That same-sex attraction is not a sin or a mental illness or a psychological disorder.

As mentioned above (section 50), it is important to distinguish between **attraction**, **identity** and **activity**. It is agreed that sexual **attraction** (whether same-sex or opposite-sex) is a temptation and not a sin. However, a person's **identity** should not be determined by sexual attraction – someone who experiences same-sex attraction, but remains chaste, is not and should not identify as a homosexual. And sexual **activity** outside marriage (whether same-sex or opposite-sex) is a bodily sin.

The question of whether same-sex attraction is a mental illness or a psychological disorder is more fraught. When the DSM-II (the US Diagnostic and Statistical Manual of Mental Disorders, version 2) was first published in 1968, homosexuality was considered a mental disorder. Gay rights activists began a campaign against American Psychiatric Association (APA) at its convention in 1970:

The activists disrupted the conference by interrupting speakers and shouting down and ridiculing psychiatrists who viewed homosexuality as a mental disorder. In 1971, gay rights activist Frank Kameny ... grabbed the microphone and yelled: "Psychiatry is the enemy incarnate. Psychiatry has waged a relentless war of extermination against us. You may take this as a declaration of war against you."⁴⁹

⁴⁸ *Marriage, Same-Sex Marriage and the Anglican Church of Australia: Essays from the Doctrine Commission*, Anglican Church of Australia, June 2019, p 6.

⁴⁹ "Diagnostic and Statistical Manual of Mental Disorders", *Wikipedia*, accessed 3 December 2019.

In the context of continuing gay activism, the APA Board of Trustees agreed in December 1973 to redefine homosexuality as a “sexual orientation disturbance”.⁵⁰ This decision was subsequently upheld in a vote of APA members by a 58% majority.⁵¹ Then in 1987, homosexuality was completely removed from the DSM. Thus, the decision not to view homosexuality as a mental disorder can be seen as a political response to the vigorous and lengthy campaign by gay activists.

Nevertheless, it remains true that homosexuals experience a much higher rate of mental disorders than the general population:

*Members of the non-heterosexual population are estimated to have about 1.5 times higher risk of experiencing anxiety disorders than members of the heterosexual population, as well as roughly double the risk of depression, 1.5 times the risk of substance abuse, and nearly 2.5 times the risk of suicide.*⁵²

61. The Doctrine Commission members report “common ground”:

That same-sex attraction is not a voluntary choice. Most gay men and lesbian women would say that they have no choice in who they are attracted to and cannot – and feel no desire to – change this.

Same-sex attraction is not a voluntary choice – it is a temptation to engage in sexual immorality and no temptation (per se) is a voluntary choice. Of course, individuals have some choice about whether they allow themselves to be exposed to temptations.

While many gay men and lesbian women may feel they cannot change, the reality is that many do – as documented above (sections 55-58). Same-sex-attracted teenagers may say they cannot change, but the evidence is that some 80% of same-sex-attracted teenagers become opposite-sex attracted a decade later (sections 55-56). The reality is that numerous people who feel unable or unwilling to change their same-sex attraction do become opposite-sex attracted later in a myriad of different circumstances (see some stories in section 57).

An excellent video documenting multiple cases of same-sex-attracted people who changed orientation is *Such Were Some of You*, available on DVD from Koorong.⁵³

Another story of orientation change is told in the YouTube video *Homosexuality Was My Identity*.⁵⁴ During the video Becket says: “When I was living that gay life for many many years, I was 100% sure that was my identity. It felt like I was born that way. It was my orientation. It was my identity, and I felt like it was immutable.” Yet he subsequently experienced radical change.

⁵⁰ “The A.P.A. Ruling on Homosexuality”, *The New York Times*, 23 December 1973, p 109.

⁵¹ Jack Drescher, “Out of DSM: Depathologizing Homosexuality”, *Behavioral Sciences (Basel)*, 4 December 2015.

⁵² Lawrence S. Mayer and Paul R. McHugh, “Sexuality and Gender: Findings from the Biological, Psychological, and Social Sciences”, *The New Atlantis*, Fall 2016.

⁵³ *Such Were Some of You: Faith, Hope and Homosexuality*, Pure Passion Media, April 2016.

⁵⁴ *Homosexuality Was My Identity*, Anchored North, www.youtube.com/watch?v=K8a5I0yv0Dw

Feelings that same-sex attraction is immutable are an unreliable guide, because feelings change. The reality is that many people with such feelings do experience subsequent change.

If the Doctrine Commission members had listened to more stories of such changes in orientation, their “common ground” should have been different.

62. The Doctrine Commission members report “common ground”:

That ‘reparative therapy’ to re-orient sexual attraction to heterosexual patterns is ineffective in the vast majority of cases. Individuals who have participated in such therapy based on an unrealistic hope or promise of re-orientation have experienced harm as a result.

This widely held view is not supported by the available evidence. Assessment of this claim requires clarification of terms such as “reparative therapy”, “re-orientation”, “effectiveness” and “harm”.

Reparative therapy is a term coined by Dr Joseph Nicolosi, Sr, founder of NARTH (the National Association for Research and Therapy of Homosexuality). Dr Nicolosi stressed that his reparative therapy was aimed at people who experienced *unwanted* same-sex sexual attractions. It was never intended for people who identify as gay and are content with their gay-self-identification.⁵⁵ Reparative therapy is one of several approaches to “sexual orientation change efforts” (or SOCE).

Sexual orientation is generally used to describe sexual attraction to other people on a continuum from exclusively heterosexual to exclusively homosexual.

Effectiveness of reparative therapy or SOCE is assessed in terms of any significant shift away from homosexual orientation and towards heterosexual orientation. The effectiveness of SOCE therapies must be judged in comparison with the effectiveness of therapies for other psychological conditions, such as depression.

Harm is sometimes claimed by those who have undergone SOCE and subsequently had negative life experiences, such as depression or suicidal ideation. However, it must be born in mind that correlation is not causation. Claims of harm from SOCE need to be assessed in comparison with groups receiving no therapy, gay-affirming therapy and therapy for other conditions.

Numerous studies published in professional journals over recent decades show significant change in sexual orientation among those seeking such change.⁵⁶

⁵⁵ “Dr Nicolosi's Beliefs”, www.josephnicolosi.com

⁵⁶ W Freeman & R G Meyer (1975), “A behavioral alteration of sexual preferences in the human male”, *Behavior Therapy*, 6, 206–212; L Hatterer (1970), *Changing heterosexuality in the male: Treatment for men trouble by homosexuality*, McGraw-Hill; J Munzer (1965), “Treatment of the homosexual in group psychotherapy”, *Topical Problems of Psychotherapy*, 5, 164–169; E M Pattison & M Pattison (1980), “‘Ex-gays’: Religiously mediated change in homosexuals”, *American Journal of Psychiatry*, 137, 1553–1562; R A Truax & G Tournay (1971) “Male homosexuals in group psychotherapy”, *Diseases of the Nervous System*, 32, 707–711; L M Diamond (2007), “A dynamical systems approach to the development and expression of female same-sex sexuality”, *Perspectives on Psychological Science*, 2, 142–161; L M Diamond (2008), *Sexual fluidity: Understanding women’s love and desire*, Harvard University Press.

The research by US academics Jones and Yarhouse, published in 2011 in a peer-reviewed scientific journal, is particularly significant because it involved a longitudinal study over 6-7 years.⁵⁷ Longitudinal studies overcome some the limitations of retrospective studies. The authors studied both sexual orientation change and indications of harm.

The initial sample of 98 subjects (72 men and 26 women) participated in “religiously mediated” counselling. The authors tracked 63 to the conclusion of the study – a retention rate of 64%, which “compares favourably to that of respected longitudinal studies”. The outcome was that 53% of participants experienced significant *wanted* change from same-sex attraction – 23% to opposite-sex attraction and 30% to chastity.

Whether the process produced harm was assessed using a “validated measure of psychological distress”. The study found that “the only statistically significant trends that emerged ... indicated *improving* psychological symptoms”. Thus, the religiously mediated SOCE process seems to have reduced the likelihood of harm.

A comprehensive report, covering decades of research, on changes to sexual orientation through multiple reorientation therapies provides extensive evidence that change is possible and unlikely to be harmful.⁵⁸

A recent detailed survey describes research on whether sexual orientation change efforts are effective or harmful.⁵⁹ It provides evidence that SOCE therapies about as effective as psychological counselling for other unwanted issues, such alcohol abuse, social phobias or eating disorders. And there is no evidence that negative experiences (“harm”) are any more common among those who have undergone SOCE therapies than those who have not.

The Doctrine Commission’s “common ground” view that reparative therapy is ineffective and harmful is contrary to the available evidence and should not be accepted.

Summary

63. **According to the Scriptures, marriage has three main purposes: procreation and raising the next generation, complementary partnership, and avoidance of sexual immorality. These purposes are consistent with the findings of social, psychological and neurological research on human needs and behaviour. They can only be adequately fulfilled through the exclusive and enduring union of a man and a woman, namely marriage.**

Scripture and the role of marriage for God’s people

64. In the history of God’s people, marriage has always been much more than a personal relationship of a man and a woman. It has had a vital role of forming, binding and sustaining the community of God’s people.

⁵⁷ Stanton L Jones & Mark A Yarhouse (2011), “A Longitudinal Study of Attempted Religiously Mediated Sexual Orientation Change”, *Journal of Sex & Marital Therapy*, 37:5, 404-427.

⁵⁸ James E Phelan, Neil Whitehead & Philip M Sutton, “What Research Shows: NARTH’s Response to the APA Claims on Homosexuality”, A Report of the Scientific Advisory Committee of the National Association for Research and Therapy of Homosexuality, *Journal of Human Sexuality*, 2009.

⁵⁹ Peter Sprigg, “Are Sexual Orientation Change Efforts (SOCE) Effective? Are They Harmful? What the Evidence Shows”, Family Research Council, 7 September 2018.

Marriage forms, binds and sustains communities

65. **Forming.** God's promise to Abraham and his wife Sarah was that their descendants would form a great nation, who would be blessed and be a blessing to others, and who would have a covenant relationship with God (Genesis 12:2, 15:5, 17:1-7). Notably, the blessing and covenant would be through the child of Abraham's marriage, not the children of his concubine. In short, the marriage of Abraham and Sarah would be the vehicle for forming a covenant community of God's people.
66. **Binding.** Marriage not only binds a man and his wife; it also plays a vital role in binding God and his covenanted people. In Jewish tradition (reflected in Joel 2:16 and Psalm 19:5), a bride and groom are married under a *chuppah* (canopy), which spiritually "represents the presence of God over the covenant of marriage".⁶⁰ In Christian tradition too, wedding vows are made in God's presence as a witness to their union. God's role as witness is to encourage faithfulness, with the goal of raising *godly offspring*:

The LORD was witness between you and the wife of your youth, to whom you have been faithless, though she is your companion and your wife by covenant. Did he not make them one, with a portion of the Spirit in their union? And what was the one God seeking? Godly offspring. So guard yourselves in your spirit, and let none of you be faithless to the wife of your youth. (Malachi 2:14–15)

Furthermore, God's desire for marriages to raise godly children is the reason for prohibiting intermarriage with unbelievers:

You shall not intermarry with [gentiles], giving your daughters to their sons or taking their daughters for your sons, for they would turn away your sons from following me, to serve other gods. Then the anger of the LORD would be kindled against you, and he would destroy you quickly. (Deuteronomy 7:3–4)

The strength of Jewish opposition to marrying a non-Jew is dramatically portrayed in the musical *Fiddler on the Roof*. Tevye (a poor Jewish milkman) reluctantly agrees to his oldest daughter marrying a poor tailor and to his next daughter marrying a revolutionary. However, when his third daughter announces that she will marry outside the Jewish faith, Tevye explodes. He refuses to speak to her and tells his family to consider her dead.

This principle of prohibiting intermarriage with unbelievers in the early church was reinforced by the apostle Paul:

Do not be unequally yoked with unbelievers. For what partnership has righteousness with lawlessness? Or what fellowship has light with darkness? (2 Corinthians 6:14)

67. **Sustaining.** The families formed by godly married couples and their children can make a major contribution to sustaining the community of God's people. This is evident from the fifth commandment:

Honour your father and your mother, that your days may be long in the land that the LORD your God is giving you. (Exodus 20:12)

⁶⁰ "Chuppah", Wikipedia, <<https://en.wikipedia.org/wiki/Chuppah>>.

This commandment is the first with a promise, as the apostle Paul reminds the readers of his letter to the Ephesians (6:2). David Klinghoffer, in his book *Shattered Tablets*, comments:

The primary beneficiary of the promise of long days "upon the land that the Lord your God gives you" is not the individual, but the society. After all, it was to the Israelites as a nation, not to individual Jews, that the Lord gave the land.⁶¹

Klinghoffer adds:

James Dobson, for one, has it right in his book Dare to Discipline ... "Young children typically identify their parents ... and especially their fathers ... with God. Therefore, if Mom and Dad are not worthy of respect, neither are their morals, their country, their values and beliefs, or even their religious faith."

Respect for parents, in other words, is a necessary condition for moral education, which is a necessary condition for a society's thriving, perhaps for its very survival.⁶²

Impact of marriage on God's people

68. Throughout the Scriptures the temporal bond of marriage between a man and his wife is associated with the spiritual bond between God and his people.

Jewish life revolves around two institutions: the home and the community. Each is endowed with unique meaning, and between these two – the private and public spaces – education, ritual, and everyday life takes place.

The Jewish home is where the core identity of young Jews is formed. And it is formed not through abstract ideas, but through concrete experiences of the five senses. The tastes, smells, sounds, and images of Jewish life are first experienced in the home – through observance of Shabbat and festivals, living a Jewish life every day, and making the home a meaningful Jewish space...

Jewish families cannot live in isolation. To live a full Jewish life requires engagement with other Jews, a Jewish community. The community provides services and experiences that the home cannot, and in addition, fellowship and participation in community have inherent spiritual value in Judaism.⁶³

69. The impact of natural families – married men and women with their children – on the wider community of which they are part is explored by Mary Eberhardt in her book *How the West Really Lost God*. She argues that the decline of the natural family in the Western world has had a significant impact on the decline of Christian belief. She writes:

⁶¹ David Klinghoffer, *Shattered Tablets: Why We Ignore the Ten Commandments at Our Peril*, Doubleday, 2007, p 118.

⁶² David Klinghoffer, *Shattered Tablets*, p 119.

⁶³ "Jewish Home and Community: The two pillars of Jewish life", My Jewish Learning, accessed 15 November 2019, <www.myjewishlearning.com/article/jewish-home-community>

[People] have simply assumed ... that the decline in the natural family was a mere consequence of the shrinking of belief. This book makes the case that the reverse is also true – in other words, that the ongoing deterioration of the natural family itself has both accompanied and accelerated the deterioration in the West of Christian belief.⁶⁴

70. The teaching of the Scriptures and evidence from other sources indicate that married men and women, and the families they form with their children, have a profound influence on the wider community. Stable male-female marriages and associated families could be vitally important for the future vitality of the Anglican Church.

Summary

71. **The Scriptures teach that marriage and family life have a vital role in forming, binding and sustaining the community of God's people. The transmission of the Christian faith from one generation to the next seems to depend, to a significant extent, on loving marriages and families. If the community of the Anglican Church is to have a vibrant future, it needs to uphold marriage as the exclusive voluntary union of a man and a woman, entered into for life.**

Scripture and the nature of blessing

72. The concept of *blessing* in the Scriptures is contrasted with that of *cursing*, just as life is contrasted with death, and good with evil. In his final words to the people of Israel, Moses exhorts them to faithfully obey God and receive his blessings and warns of the curses that will result if they do not (emphasis added):

*If you faithfully obey the voice of the LORD your God, being careful to do all his commandments that I command you today, the LORD your God will set you high above all the nations of the earth. And all these **blessings** shall come upon you and overtake you, if you obey the voice of the LORD your God.*

*If you will not obey the voice of the LORD your God or be careful to do all his commandments and his statutes that I command you today, then all these **curses** shall come upon you and overtake you. (Deuteronomy 28:1-3, 15)*

73. In the New Testament, Jesus presents an equally vivid distinction between those who will be blessed by God and those who will be cursed (emphasis added):

*When the Son of Man comes in his glory ... he will separate people one from another as a shepherd separates the sheep from the goats. And he will place the sheep on his right, but the goats on the left. Then the King will say to those on his right, 'Come, you who are **blessed** by my Father, inherit the kingdom prepared for you from the foundation of the world...*

*Then he will say to those on his left, 'Depart from me, you **cursed**, into the eternal fire prepared for the devil and his angels... (Matthew 25:31–34, 41)*

⁶⁴ Mary Eberstadt, *How the West Really Lost God: A New Theory of Secularization*, Templeton Press, 2013.

74. In both the Old and New Testaments, the blessings flow from obeying the commands of God – the Mosaic law in the Old Testament and the commands of Christ in the New Testament.

It follows that a service of blessing can be in accordance with the Scriptures only if the purpose of the service is to endorse persons or actions that obey the commands of God. Since same-sex relationships are condemned by God, they cannot legitimately be endorsed by a service of blessing.

Summary

75. **The Scriptures teach that God's blessings follow obedience to the commands of Christ, whereas rejection of His commands leads to the curse of eternal fire. A service seeking God's blessing is only appropriate in obedience to Christ's commands. Since same-sex unions are condemned by God (for reasons given earlier) they cannot attract God's blessing. A service purporting to seek God's blessing of sinful actions would be contrary to the Fundamental Declarations and Ruling Principles.**

Inconsistency with the Ruling Principles

76. The Ruling Principles of the Anglican Church of Australia state:

This Church, being derived from the Church of England, retains and approves the doctrine and principles of the Church of England embodied in the Book of Common Prayer ... as the authorised standard of worship and doctrine in this Church, and 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.

77. The part of the Book of Common Prayer most relevant to the questions under consideration is *The Form of Solemnization of Matrimony*.

The preface to this service states clearly that those to be joined in holy matrimony are a man and a woman (emphasis added):

*Dearly beloved, 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 of God in the time of man's innocence, signifying unto us the mystical union that is betwixt Christ and his Church...*

78. The preface sets out the three purposes "for which Matrimony was ordained":

First, It was ordained for the procreation of children, to be brought up in the fear and nurture of the Lord, and to the praise of his holy Name.

Secondly, It was ordained for 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.

Thirdly, It was ordained for the mutual society, help, and comfort, that the one ought to have of the other, both in prosperity and adversity. Into which holy estate these two persons present come now to be joined.

These are the three purposes given in the Scriptures and summarised above at 34-39, 47-58 and 40-46 respectively.

79. The preface also warns that unions contrary to the Scriptures are invalid:

[B]e ye well assured, that so many as are coupled together otherwise than God's Word doth allow are not joined together by God; neither is their Matrimony lawful.

Since same-sex unions are condemned in the Scriptures, any service purporting to couple them are not joined by God and are invalid.

80. The service is expressed in complementary terms, with the man and woman making slightly different promises. And a single ring is given by the man and received by the woman as an expression of their union. These complementary elements are in accordance with the Scriptures, as outlined in paragraphs 40-46 above.

A service involving two people of the same sex would not have these complementary elements.

Summary

81. The Form of Solemnization of Matrimony in the Book of Common Prayer embodies the teaching of the Scriptures (outlined in sections 23 to 58 above) that:

- marriage is between a man and a woman;
- marriage was ordained for the purposes of procreation, avoidance of sin and complementary companionship.; and
- any union contrary to God's Word is not blessed by God.

Consequently, any union contrary to the teaching of the Scriptures, including a same-sex union, is contrary to the Ruling Principles and thus unlawful in the Anglican Church of Australia.

The answer to questions 1 of the first reference from the Appellate Tribunal, dated 5 September 2019, is "no". The blessing of same-sex civil "marriages" is NOT consistent with the Fundamental Declarations or Ruling Principles of the Anglican Church of Australia.

Inconsistency with Anglican doctrine

82. The second reference from the Appellate Tribunal, dated 21 October 2019, asks two questions regarding Anglican doctrine – whether it is consistent with the doctrine of this Church to bless a civil marriage involving a union other than between one man and one woman using:

- the form of service at Appendix A to the Wangaratta Regulations, or
- any other form of service, purportedly made in accordance with section 5 of the *Canon Concerning Services 1992*.

83. Both questions hinge on whether the use of any form of service, 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.

84. Since the third Fundamental Declaration affirms that this "Church will ever obey the commands of Christ, teach His doctrine...", the "doctrine of this Church" must be consistent with Christ's doctrine.
85. As mentioned at 15 above, section 74(1) of the Constitution defines doctrine as "the teaching of this Church on any question of faith." The second Fundamental Declaration affirms the Scriptures as the ultimate rule and standard of faith on things necessary for salvation. Thus, the test of consistency with the doctrine of this Church becomes a test of consistency with the Scriptures.
86. The Ruling Principles also address the "doctrine of this Church". They state that the "Book of Common Prayer, together with the Thirty-nine Articles" are "regarded as the authorised standard of worship and doctrine in this Church". And Article 6 – Of the Sufficiency of the holy Scriptures for salvation – essentially affirms the second Fundamental Declaration, namely that the Scriptures are the ultimate rule and standard of faith on things necessary for salvation.
87. Consequently, both the Fundamental Declarations and the Ruling Principles require the test of consistency with the doctrine of this Church to be a test of consistency with the Scriptures.
88. This submission argues in sections 23 to 58 above that same-sex unions are condemned in the Scriptures and cannot be considered "marriage". Sections 72 to 75 argue that any form of service purporting to bless something that is condemned in the Scriptures is invalid. It follows that any form of service purporting to bless a civil marriage involving a union other than between one man and one woman is contrary to the doctrine of the Church.

Summary

89. **The answer to questions 1 and 2 of the second reference from the Appellate Tribunal, dated 21 October 2019, is "no". The blessing of same-sex civil "marriages" is NOT consistent with the doctrine of this Church and NOT consistent with the Fundamental Declarations or Ruling Principles of the Anglican Church of Australia.**

Canon Concerning Services 1992

90. The first reference, dated 5 September 2019, asks whether the Wangaratta Regulation "is validly made pursuant to the *Canon Concerning Services 1992*". The second reference, dated 21 October 2019, asks whether "in light of the determinations to be made in Questions 1 & 2, the Regulations are validly made pursuant to the *Canon Concerning Services 1992*".
91. The *Canon concerning Services 1992* provides in section 4(1) that the authorised forms of service are those in the Book of Common Prayer and those authorised by "a canon of the General Synod in force in the diocese of which that parish is part." Section 4(2) allows a minister "the discretion allowed by section 5".
92. Section 5(2) of the Canon states:

Subject to any regulation made from time to time by the Synod of a diocese, a minister of that diocese may on occasions for which no provision is made use forms of service considered suitable by the minister for those occasions.

However, this discretion is subject the condition in section 5(3), namely:

All variations in forms of service and all forms of service used must be reverent and edifying and must not be contrary to or a departure from the doctrine of this Church.

93. For reasons given in earlier parts of this submission, the Wangaratta Regulations are contrary to the Fundamental Declarations and the Ruling Principles and hence also contrary to the doctrine of this Church. Consequently, the Wangaratta Regulations are not validly made under the Canon.

94. Section 5(4) of the Canon states:

A question concerning the observance of the provisions of sub-section 5(3) may be determined by the bishop of the diocese.

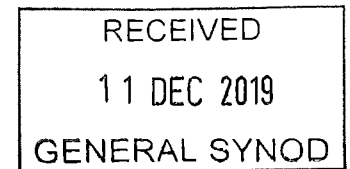
However, the bishop of a diocese is bound by the Constitution and cannot validly authorise a variation that is contrary to the doctrine of the Church.

Summary

95. **Consequently, the Wangaratta Regulations are not validly made pursuant to the *Canon Concerning Services 1992*.**

Conclusion

96. Re the reference dated 5 September 2019, question 1 should be answered “no” – the Wangaratta Regulations are NOT consistent with the Fundamental Declarations and Ruling Principles in the *Constitution of the Anglican Church of Australia*.
97. Re the reference dated 5 September 2019, question 2 should be answered “no” – the Wangaratta Regulations are NOT validly made pursuant to the *Canon Concerning Services 1992*.
98. Re the reference dated 21 October 2019, question 1 should be answered “no” – the use of the form of service at Appendix A to the Wangaratta Regulations to bless a civil marriage which involved a union other than between one man and one woman, is NOT consistent with the doctrine of this Church and NOT consistent with the Fundamental Declarations and Ruling Principles in the *Constitution of the Anglican Church of Australia*.
99. Re the reference dated 21 October 2019, question 2 should be answered “no” – 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 NOT consistent with the doctrine of this Church and NOT consistent with the Fundamental Declarations and Ruling Principles in the *Constitution of the Anglican Church of Australia*.
100. Re the reference dated 21 October 2019, question 3 should be answered “no” – in light of the answers to Questions 1 & 2, the Wangaratta Regulations are NOT validly made pursuant to the *Canon Concerning Services 1992*.



13

**Submission on the 2019 Wangaratta Regulation on the Blessing of Persons in
Civil Marriages
to the Appellate Tribunal of the Anglican Church of Australia**

by Mrs Roslyn Phillips, BSc DipEd

Tea Tree Gully Anglican Church

Diocese of Adelaide

11 December 2019

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The background

On 21 October 2019 the Primate made the following reference to the Appellate Tribunal at the request of 25 members of the General Synod:

A. At a session in August 2019 the Synod of the Diocese of Wangaratta purportedly made the Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019 pursuant to Section 5(2) of the Canon Concerning Services 1992.

B. Section 5(3) of the Canon Concerning Services 1992 provides that all forms of service used pursuant to Section 5(2) "must be reverent and edifying and must not be contrary to or a departure from the doctrine of the Church."

The questions

The following questions arising under the Constitution are referred 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.
3. Whether, in light of the determinations to be made in Questions 1 & 2, the Regulations are validly made pursuant to the **Canon Concerning Services 1992**.

Response to Question 1

Part 1, Chapter 1 of the Constitution of the Anglican Church of Australia (hereafter called “the Constitution”) includes the following two of three Fundamental Declarations, which can never be changed:

2. This 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.

3. This Church will ever obey the commands of Christ, teach His doctrine, administer His sacraments of Holy Baptism and Holy Communion, follow and uphold His discipline and preserve the three orders of bishops, priests and deacons in the sacred ministry.

Part 1, Chapter II of the Constitution includes, in the Ruling Principles, the words:

“... it is hereby further declared, that the ... Book of Common Prayer, together with the Thirty-nine Articles, be regarded as the authorised standard of worship and doctrine in this Church, and 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.”

Key definitions

The questions depend on the Constitutional meaning of the following terms:

the doctrine of the Anglican Church of Australia;

Christ’s discipline;

faith;

blessing.

“**Doctrine**” in the Constitution means the teaching of the Anglican Church of Australia on any question of faith.¹

“**Discipline**” in the Constitution means ... in Chapters II to VII and X to XII the obligation to adhere to, to observe and to carry out (as appropriate): ... the faith, ritual and ceremonial of this Church...”²

“**Faith**” is not defined in the Constitution except to say that it “includes the obligation to hold the faith”.³ In the context of the Constitution, faith consists of Anglican beliefs about God and his dealings with mankind as set out in the Old and New Testaments and the 1662 Book of Common Prayer with the Thirty-nine Articles. Matters of faith therefore include Anglican beliefs about the nature of marriage and the actions that are contrary to God’s will, known as “sin”.

The first meaning of the verb “**bless**”, according to the online Oxford Dictionary *Lexico*, means to “pronounce words in a religious rite in order to confer or invoke divine favour upon; ask God to look

1. The Constitution of the Anglican Church of Australia, s74.

2. *Ibid.*

3. *Ibid.*

favourably on”.⁴ It follows that a service of blessing is a where prayers to God are said, seeking his favour on a person, people or thing such as a home, meal, ship or venture.

The Wangaratta Regulation 2019 authorises services of blessing for civil marriages including those involving a sexual relationship between two men or two women. But God cannot approve or bless such sexual activity, since it is condemned in the canonical scriptures of both Old and New Testaments.⁵

The Regulation is thereby inconsistent with the **Fundamental Declaration #2** of the Anglican Church of Australia, which states that all the canonical scriptures of the **Old and New Testaments** “are the ultimate rule and standard of faith given by inspiration of God and containing all things necessary for salvation”.

In 1 Corinthians 6: 9-10, the Apostle Paul lists some behaviours that would prevent a person from inheriting the kingdom of God – that is, receiving salvation. The bars to salvation include theft, greed, drunkenness, slander, adultery – and homosexual offences. The latter term is *arsenokoites* in the Greek, a word coined by Paul to correspond to the sexual activity condemned in Leviticus 18: 22 and 20: 13.⁶ It would not be possible for God to approve or bless continuing behaviour that he has condemned and that would preclude salvation.

The Regulation is also inconsistent with the **Ruling Principles** of the Anglican Church of Australia, since the Constitution states in part I chapter II that the **Book of Common Prayer**, together with the **Thirty-nine Articles**, is “the authorised standard of worship and doctrine in this Church, and no alteration in or permitted variations from the services or Articles therein contained shall contravene any principle of doctrine...”

Article 34 says: “It is not necessary that Traditions and Ceremonies be in all places one, and utterly like; for at all times they have been divers, and may be changed according to the diversities of countries, times, and men’s manners, *so that nothing be ordained against God’s Word.*” This Article allows variations in Church services, provided they do not contravene God’s Word in the Scriptures. A service of blessing for couples in a same-sex sexual relationship would contravene Biblical teaching⁷ and thereby contravene the Thirty-nine Articles.

Article 7 says: “Although the Law given from God by Moses, as touching Ceremonies and Rites, do not bind Christian men, nor the Civil precepts thereof ought of necessity to be received in any commonwealth; yet, notwithstanding, *no Christian man whatsoever is free from the obedience of the Commandments which are called Moral.*” Thus Old Testament precepts relating to moral behaviour such as adultery, fornication and homosexual activity remain binding on Christians.

The Regulation, by validating the changed definition of marriage in Australian civil law as a union of two persons rather than a man and a woman, also contravenes the Book of Common Prayer.

The service of Solemnization of Holy Matrimony in the Book of Common Prayer clearly teaches that marriage is a man-woman union. The priest says at the outset: “Dearly beloved, we are gathered

4. <https://www.lexico.com/en/definition/bless>, accessed 24/11/19.

5. See for example Leviticus 18:22 and 20: 13, Matthew 15:19, Romans 1:26-27, 1 Corinthians 6:9-10, 1 Timothy 1:9-10.

6. Michael Stead, “The case against same-sex marriage”, *Marriage, Same-Sex Marriage and the Anglican Church of Australia*, Essays from the Doctrine Commission, The Anglican Church of Australia, Broughton Publishing, June 2019, pp 301-302.

7. Leviticus 18:22 and 20: 13, Matthew 15:19, Romans 1:26-27, 1 Corinthians 6:9-10, 1 Timothy 1:9-10.

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...”

The “man-woman union” meaning of marriage has also been affirmed by Christ himself as being instituted by God “at the beginning” of creation.⁸

Biblical teaching on marriage⁹ consistently indicates that it applies to a man-woman union: indeed, despite the prevalence of polygamy in pre-Christian times, Genesis 2:24 refers to a man leaving his parents and joining with his (one, female) wife. In Matthew 19: 4-6, Christ himself affirmed both Genesis 1:27 (God created mankind male and female) and Genesis 2: 24 – thus establishing God’s intention at the beginning of creation to institute marriage as a lasting covenant between one man and one woman.

The notion that marriage could also encompass two men or two women – or that a sexual relationship between two people of the same sex is part of God’s plan for his people – is in direct contravention of God’s law set out in Old and New Testaments.

The Book of Common Prayer, defined by the Constitution’s Ruling Principles to be, along with the Thirty-nine Articles, the authorised standard of doctrine in the Anglican Church of Australia, reinforces this answer. The Solemnization of Holy Matrimony states the doctrine – or disciplinary rule – that:

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

Since God’s Word – in both Old and New Testaments – does not allow same-sex coupling, it follows that any covenant involving such coupling, whether it is called a “civil marriage” or “civil union” or some other term, cannot be given God’s blessing or seal of approval. God cannot bless sin.

The answer to Question 1 is therefore *No*: the regulation Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019 made by the Synod of the Diocese of Wangaratta is *not* consistent with the Fundamental Declarations and Ruling Principles in the Constitution of the Anglican Church of Australia.

8. Matthew 19:4-6, Genesis 1:27 and 2: 24.

9. Matthew 19:4-6, Genesis 1:17 and 2: 24, Ephesians 5:22-33, Col 3: 18-19, 1 Peter 3: 1-7.

Some opposing views

Some contributions to the Doctrine Commission's 2019 publication, "Marriage, Same-Sex Marriage and the Anglican Church of Australia" have suggested that New Testament passages condemning homosexual activity:

- (a) did not refer to sexual intercourse between two adults in a loving, lasting, faithful relationship, or
- (b) should be rejected as no longer relevant in the light of "lived experience" in the modern world.

However, as Michael Stead has pointed out, there is no valid evidence for argument (a).¹⁰ Moreover, the Constitution states that the canonical scriptures of the Old and New Testaments are the ultimate rule and standard of faith for the Anglican Church of Australia – not subjective concepts such as "lived experience", as claimed by Matthew Anstey.¹¹

Dr Anstey also mentioned "scientific evidence" as an authoritative source to help determine Christian doctrine¹² – even though on the issue of same-sex attraction, valid scientific evidence does not support his beliefs. I will explain in more detail later in this submission.

The opposing views of Dr Anstey and other authors supporting the Wangaratta Regulations are therefore not credible.

10. Michael Stead, "The case against same-sex marriage", *Marriage, Same-Sex Marriage and the Anglican Church of Australia*, Essays from the Doctrine Commission, The Anglican Church of Australia, Broughton Publishing, June 2019, pp 296-302.

11. Matthew Anstey, "Scripture and Moral Reasoning", *Marriage, Same-Sex Marriage and the Anglican Church of Australia*, Essays from the Doctrine Commission, The Anglican Church of Australia, Broughton Publishing, June 2019, pp 57, 64, 71; "The case for same-sex marriage", *Marriage, Same-Sex Marriage and the Anglican Church of Australia*, Essays from the Doctrine Commission, The Anglican Church of Australia, Broughton Publishing, June 2019, p 274.

12. Matthew Anstey, "The case for same-sex marriage", *Marriage, Same-Sex Marriage and the Anglican Church of Australia*, Essays from the Doctrine Commission, The Anglican Church of Australia, Broughton Publishing, June 2019, p 275.

Christ's teaching on homosexual activity

It is sometimes claimed that Jesus did not mention, let alone censure, homosexual activity – thus leaving it open for Christians to practise homosexuality in a loving, mutually faithful relationship.

Matthew Anstey says: "Given Jesus makes no reference to homosexuality, his citation of Genesis 2 in his discussion of divorce is interpreted as Christ's endorsement of heterosexual marriage only (i.e. heteronormativity)."¹³

Dorothy Lee says: "The recent book of the Doctrine Commission, *Marriage, Same-sex Marriage and the Anglican Church of Australia*, argues for and against same-sex covenant unions. A number of these articles argue on biblical grounds that there is no theological objection to same-sex covenant partnerships.

"The argument of these essays is that Jesus himself never said a word against homosexuality..."¹⁴

However, this argument is false. Jesus *did* say something about homosexual activity: he condemned it. Sexual intercourse between two men or two women is included in the meaning of the New Testament Greek word "porneiai" found in Matthew 15:19 and Mark 7: 21, where Jesus cites the evil things that come out of a person, making him or her unclean – evil thoughts, murder, adultery, theft, false testimony, slander – and *porneiai*.

The Greek word *porneia* (or *porneiai*, plural) is translated "fornications" in the King James Bible and "sexual immorality" in some other versions. It means "illicit sexual intercourse" and includes adultery, fornication, incest, homosexuality, lesbianism and bestiality, all of which are forbidden in Old Testament law.¹⁵ Jesus's Jewish hearers would have understood the full meaning of *porneiai*. They would have understood his clear condemnation of homosexual activity, along with murder, theft and other sins.

Thus Matthew 15: 19 and Mark 7: 21 convey Christ's doctrine and discipline (*Fundamental Declaration #3*) on same-sex couplings: these couplings are evil. Any Anglican service purporting to invoke God's blessing on same-sex couplings, including those contracted as civil marriages under federal law, cannot be consistent with the Constitution.

13. Matthew Anstey, "The case for same-sex marriage", *Marriage, Same-Sex Marriage and the Anglican Church of Australia*, Essays from the Doctrine Commission, The Anglican Church of Australia, Broughton Publishing, June 2019, p 280.

14. Rev Canon Professor Dorothy Lee, "The Blessing of Civil Unions", Address to the Synod of Wangaratta, 31 August 2019.

15. Kittel and Bromiley both define *porneiai* to include "adultery, fornication, licentiousness and homosexuality": Kittel, Gerhard, "Theological Dictionary of the new Testament", Eerdmans, 1968, vol. vi., pp 581-595; Bromiley, Geoffrey W, "Theological Dictionary of the New Testament", Eerdmans Publishing, 1985, VI, pp 918-921.

The physical risks of homosexual activity

In Romans 1: 27, the apostle Paul condemns those men who “committed indecent acts with other men and received in themselves the due penalty for their perversion.”

Ironically, this Bible verse is affirmed by the “lived experience” of many homosexual men past and present: the health risks associated with male homosexual activity are significantly greater than for heterosexual males.

The reasons lie in God’s design of the human body.

Even a brief study of male and female anatomy shows that their genital organs naturally fit together. The male penis and the female vagina appear designed to unite – like male and female parts in carpentry joints, electrical connections or a nut and a bolt.

The female vagina is a flexible tube with three layers of cells in its wall – mucosal, muscle and elastic fibres. It is lubricated naturally, in part by mucus-secreting glands near the vaginal opening.¹⁶

The vagina is elastic as well as strong. It can stretch to fit the male penis, and even further to accommodate the head of a baby as it travels through the vagina during birth. Where there is no birth injury or sexually transmitted infection, the vagina is not readily breached – unlike the rectum, which has a much thinner wall.¹⁷

The rectum is used as a vaginal substitute by most male homosexual couples during anal intercourse.¹⁸ A much smaller percentage of heterosexual couples practise anal intercourse regularly, incurring the same increase in health risks as male homosexual couples.¹⁹

The rectum is a tube containing faeces laden with micro-organisms, without significant natural lubrication. The thin rectal wall is much more easily damaged than the vagina. Micro-tears, causing bleeding from the tiny blood vessels lining the rectum, are believed to occur during every act of anal intercourse.²⁰

It follows that any harmful faecal bacteria, viruses and other pathogens in the rectum can directly enter the bloodstream of the person receiving anal intercourse – putting that person at high risk of various diseases. Pathogens in the rectum can also enter the insertive partner through the eye of the penis and any minor breaks in the skin. The risk is much greater if no condom is used, or if the condom breaks or slips off.

The prevalence of HIV among sexual partners of gay, bisexual, and other men who have sex with men is 40 times that of sexual partners of heterosexual men.²¹

16. Female Genital Anatomy, Boston University School of Medicine, accessed online, 8/11/19: <http://www.bumc.bu.edu/sexualmedicine/physicianinformation/female-genital-anatomy/>.

17. Glare, Eric, “It’s time to talk top: the risk of insertive, unprotected anal sex”, *HIV Australia*, Vol 9 No 3, Nov 2011.

18. “Out late, a guide for older men coming out”, AFAO (Australian Federation of AIDS Organisations), accessed online 8/11/19: https://www.afao.org.au/wp-content/uploads/2016/12/OutLate_2010-archive.pdf.

19. “The Consequences of Heterosexual Anal Sex for Women”, *The Medical Institute for Sexual Health*, August 2016, accessed 8/11/19: <https://www.medinstitute.org/2016/08/the-consequences-of-heterosexual-anal-sex-for-women/>.

20. Glare, Eric, *loc. cit.*

21. “For Your Health: Recommendations for A Healthier You”, Centers for Disease Control and Prevention, US, accessed online, 8/11/19: <https://www.cdc.gov/msmhealth/for-your-health.htm>.

The immune response of the receptive partner may also be affected. Research on rabbits and another study on mice have found that sperm deposited in the rectum has a negative impact on the immune system.²²

The insertive partner in anal intercourse is at increased risk of disease unless a condom is used.²³ However, condoms used during anal intercourse are more likely to break²⁴ – and the act of removing the condom, unless protective gloves are worn, puts the user in contact with faecal matter and its associated pathogens.

Not surprisingly, diseases disproportionately associated with anal intercourse include syphilis, gonorrhoea, hepatitis A, B and C, shigella, human papillomavirus, HIV and anal cancer.^{25, 26}

An Australian doctor has written:

“We go to great lengths to encourage people to wash their hands after using the toilet. We even put up signs in public toilets, telling people how to wash.

“Yet the government is proposing to give honour to the insertion of a penis into an anus. You just cannot do this. We need to care for our citizens, including homosexuals. But it does not mean we celebrate what they do, just as we do not celebrate what drug users do to themselves, while caring for them and providing medical treatment.”²⁷

22. JM Richards, JM Bedford, SS Witkin, “Rectal insemination modifies immune responses in rabbits”, *Science*, Vol 224, Issue 4647, pp 390-392, April 1984.

23. “Anal sex and HIV risk”, Centers for Disease Control and Prevention, US, accessed online, 8/11/19: <https://www.cdc.gov/hiv/risk/analsex.html>.

24. Silverman, Barbara G, Gross, Thomas P, “Use and Effectiveness of Condoms During Anal Intercourse: A Review”, *Sexually Transmitted Diseases*, January 1997, Volume 24, Issue 1, pp 11-17.

25. Dale O’Leary, “The syndemic of AIDS and STDS among MSM”, *Linacre Q*, February, 2014; 81(1), pp 12–37.

26. “Sexually Transmitted Diseases”, Centers for Disease Control and Prevention, US, accessed online 9/11/19: <https://www.cdc.gov/msmhealth/STD.htm>

27. Private communication, 2012. The doctor asked to remain anonymous.

The Red Cross blood battle

It is sometimes argued that although as a group, men who have sex with men are at much greater risk of contracting sexually transmitted infections such as HIV, homosexual men in a permanent monogamous relationship are not at risk and the Church should therefore encourage such relationships – for example, by blessing same-sex civil marriages.

However, a ruling by the Tasmanian Anti-Discrimination Tribunal on a complaint by a homosexual activist against the Red Cross exposes the flaws in this argument.

The Red Cross prohibits a number of different groups from giving blood. They include sex workers, people who inject illicit drugs, men who have had sex with men and people who have come to Australia from sub-Saharan Africa. However, only homosexual activists have condemned their exclusion as unjust “discrimination”.

On 2 August 2005, Michael Cain lodged a formal complaint against the Australian Red Cross with the Tasmanian Anti-Discrimination Commission. He said that his homosexual activity was lawful. He said the Red Cross had unlawfully stigmatised and discriminated against him by refusing to accept blood from any man who has had sex with another man during the previous 12 months.

Mr Cain claimed that the HIV/AIDS risk is not associated with homosexual men per se, but with those (including heterosexuals) who engage in unsafe practices. He said that monogamous homosexual couples who always use condoms should be allowed to donate blood.

The Commission upheld Mr Cain’s complaint. The Red Cross then appealed the decision to the Tasmanian Anti-Discrimination Tribunal, which finally handed down its decision on 27 May 2009.²⁸

The Tribunal’s 120-page decision quoted evidence from expert witnesses and noted that:

- Condoms do not guarantee “safe sex” and are only about 80-90% effective.
- While all blood donations are tested for HIV, there is a period of time after infection when the test is unreliable.
- Unprotected receptive anal intercourse is responsible for by far the greatest number of HIV infections in Australia. The insertive partner is also at risk, but to a lesser extent.
- A homosexual man may believe his relationship is monogamous, but he cannot guarantee his partner’s fidelity.
- A homosexual man who always uses condoms in an apparently monogamous relationship is nevertheless still at risk of HIV because condoms do not give 100% protection and there is a relatively high prevalence of HIV (5-10%) in the Australian homosexual community.
- Men who have sex with men are at higher risk from other blood-borne diseases such as syphilis and hepatitis B and C.
- The Red Cross does not accept blood from other groups at higher risk of blood-borne diseases such as HIV, including people who inject illicit drugs, prostitutes and their customers, and people from certain overseas countries and their partners.

28. *Cain, Michael v The Australian Red Cross Society*. The Tasmanian Anti-Discrimination Tribunal’s 2009 decision on this case was available for some years on the website of the Tasmanian Magistrates Court, but is no longer accessible online. A summary was published in *VoxPoint* magazine, August 2012, pp B, C.

- The estimated incidence of HIV per year in Australian homosexual men in general is between 60 - 121 times greater than for Australian heterosexual men in general.
- The HIV incidence for monogamous homosexual men who always use condoms is nearly twice as great as for heterosexual men who never use condoms.
- Australia has one of the safest blood supplies in the world. The blood supplies in Spain and Italy, where homosexual men are allowed to donate blood in some circumstances, are less safe than in Australia.

The complaint determination lasted nearly four years, at great cost to the taxpayer. But Mr Cain said he would continue to fight for the homosexual "right" to give blood – despite expert evidence that blood banks need to discriminate against several groups of people in the interests of public health and safety.

Did God create homosexuals?

It is sometimes argued that people with same-sex attractions are born that way, so God must have created them with these feelings – and if they are expressed in a context of loving mutual commitment, their sexual activity is in line with God's will.

However, there is no evidence that same-sex attraction is either fully inherited via genes or the result of hormonal exposure in the womb. Life experiences – possibly very early in life – play a much more significant part than genetic tendency in the development of same-sex or bisexual attraction.

God did not "create" homosexuals any more than he created drunkards, whose activities are also condemned in the Bible.²⁹ Some drunkards may have been predisposed to alcohol addiction by genes or life experiences such as a dysfunctional family in childhood, beyond their control. However, the success of "12 Step" programs like Alcoholics Anonymous shows that with help, they can abstain and overcome their problem.

Studies of identical twins who grow up to have different sexual orientations despite having the same genes and the same hormonal exposure in the womb show that these factors are not significant causes of homosexual attraction.³⁰ Other studies show that sexual orientation is particularly changeable during adolescence – it is not immutable.³¹

An article by Dr Mark Ellis MD, "Identical Twin Studies Prove Homosexuality Is Not Genetic", was published in *The Aquila Report*, 30 May 2015. He said (in part):³²

Eight major studies of identical twins in Australia, the U.S., and Scandinavia during the last two decades all arrive at the same conclusion: "gays" were not born that way.

29. 1 Corinthians 6: 9-10.

30. Niklas Langstrom, et al, "Genetic and Environmental Effects on Same-sex Sexual Behavior: A Population Study of Twins in Sweden", *Archives of Sexual Behavior*, 2010, Vol 39, pp 75 80; A Burri, et al, "Genetic and Environmental Influences on Female Sexual Orientation, Childhood Gender Typicality and Adult Gender Identity", 2011, *PLoS ONE*, Vol 6, Issue 7, e21982.

31. Matt Shipman, "Study Highlights Fluid Sexual Orientation in Many Teens", North Carolina State University, 4/11/19, <https://news.ncsu.edu/2019/11/teen-sexual-orientation/>.

32. Mark Ellis, "Identical Twin Studies Prove Homosexuality Is Not Genetic", *God Reports*, US, 11/5/13, <http://godreports.com/2013/05/identical-twin-studies-prove-homosexuality-is-not-genetic/>. See also: Ed Young, "No, Scientists Have Not Found the 'Gay Gene' – the media is hyping a study that doesn't do what it says it does", *The Atlantic*, 10/10/15.

"At best genetics is a minor factor," says Dr Neil Whitehead, PhD. Whitehead worked for the New Zealand government as a scientific researcher for 24 years, then spent four years working for the United Nations and the International Atomic Energy Agency. Most recently, he serves as a consultant to Japanese universities about the effects of radiation exposure. His PhD is in biochemistry and statistics.

Identical twins have the same genes or DNA. They are nurtured in equal prenatal conditions. If homosexuality is caused by genetics or prenatal conditions and one twin is "gay", the co-twin should also be "gay".

But the studies reveal something else. "If an identical twin has same-sex attraction, the chances the co-twin also has same-sex attraction are only about 11% for men and 14% for women," Dr Whitehead says.

Because identical twins are always genetically identical, homosexuality cannot be genetically dictated. "No-one is born gay," he notes. "The predominant things that create homosexuality in one identical twin and not in the other have to be post-birth factors."

Dr Whitehead believes same-sex attraction (SSA) is caused by "non-shared factors," things happening to one twin but not the other, or a personal response to an event by one of the twins and not the other.

For example, one twin might have exposure to pornography or sexual abuse, but not the other. One twin may interpret and respond to their family or classroom environment differently than the other. "These individual and idiosyncratic responses to random events and to common environmental factors predominate," he says.

The first very large, reliable study of identical twins was conducted in Australia in 1991, followed by a large U.S. study about 1997. Then Australia and the U.S. conducted more twin studies in 2000, followed by several studies in Scandinavia.

"Twin registers are the foundation of modern twin studies. They are now very large, and exist in many countries. A gigantic European twin register with a projected 600,000 members is being organized, but one of the largest in use is in Australia, with more than 25,000 twins on the books," Dr Whitehead says.

A significant twin study among adolescents shows an even weaker genetic correlation. In 2002 Bearman and Brueckner studied tens of thousands of adolescent students in the U.S.³³ The same-sex attraction concordance between identical twins was only 7.7% for males and 5.3% for females – lower than the 11% and 14% in the Australian study by Bailey et al conducted in 2000. In the identical twin studies, Dr Whitehead has been struck by how fluid and changeable sexual identity can be.

"Neutral academic surveys show there is substantial change. About half of the homosexual/bisexual population (in a non-therapeutic environment) moves towards heterosexuality over a lifetime. About 3% of the present heterosexual population once firmly believed themselves to be homosexual or bisexual."

33. Peter Bearman, Hannah Brückner, "Opposite-Sex Twins and Adolescent Same-Sex Attraction", Semantic Scholar, US, 2002, <https://www.semanticscholar.org/paper/Opposite-Sex-Twins-and-Adolescent-Same-Sex-Bearman-Brueckner/2e3b7ab65ef2d4cd988a504fef0120b955599065>.

"Sexual orientation is not set in concrete," he notes. Even more remarkable, most of the changes occur without counselling or therapy. "These changes are not therapeutically induced, but happen 'naturally' in life, some very quickly," Dr Whitehead observes. "Most changes in sexual orientation are towards exclusive heterosexuality."

Numbers of people who have changed towards exclusive heterosexuality are greater than current numbers of bisexuals and homosexuals combined. In other words, "ex-gays" outnumber actual "gays". The fluidity is even more pronounced among adolescents, as Bearman and Brueckner's study demonstrated. "They found that from 16 to 17-years-old, if a person had a romantic attraction to the same sex, almost all had switched one year later."

"The authors were 'pro-gay' and they commented that the only stability was among the heterosexuals, who stayed the same year after year. Adolescents are a special case – generally changing their attractions from year to year."

Still, many misconceptions persist in the popular culture. Namely, that homosexuality is genetic – so hard-wired into one's identity that it can't be changed. "The academics who work in the field are not happy with the portrayals by the media on the subject," Dr Whitehead notes. "But they prefer to stick with their academic research and not get involved in the activist side."

Even though same-sex attraction is not genetic, Dr Whitehead disagrees with those who contend that homosexuals "choose" their orientation. "There can be little informed, responsible choice involved if first attraction is about age 10," he notes. "At that age no-one chooses lifetime sexual orientation or lifestyle in any usual sense. SSA is discovered to exist in oneself rather than chosen."

Response to Question 2

As explained in answer to Question 1, Anglican doctrine under the Constitution teaches that sexual activity by two people of the same sex is sinful and cannot be blessed.

Thus 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 *not* consistent with the doctrine of this Church and *not* consistent with the Fundamental Declarations and Ruling Principles in the Constitution of the Anglican Church of Australia.

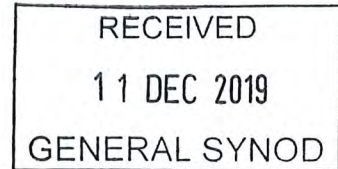
Response to Question 3

As shown earlier in answer to Questions 1 & 2, the Regulations are *not* validly made pursuant to the Canon Concerning Services 1992.

SUBMISSION TO THE APPELLATE TRIBUNAL

Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019 (Wangaratta)

The Registrar
Appellate Tribunal
General Synod Office Anglican Church of Australia
189 Kent St
Sydney NSW 2000



appellatetribunal@anglican.org.au

Dear Registrar,

The Evangelical Fellowship in the Anglican Communion Western Australia is grateful for the opportunity to respond to the submission of the Synod of the Diocese of Wangaratta. Our submission reads.

Primate's Reference to the Appellate Tribunal – Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019 (Diocese of Wangaratta)

In answer to the questions referred to the Appellate Tribunal we submit

The Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019 made by the Synod of the Diocese of Wangaratta is **inconsistent** with the Fundamental Declarations and Ruling Principles in the Constitution of the Anglican Church of Australia.

The regulation is **not validly made** pursuant to the Canon Concerning Services 1992.

To both questions we answer that the regulation, insofar as it is applied to the blessing of "marriages" of persons of the same sex and/or gender, proposes to bless what is forbidden in Holy Scripture (Fundamental Declarations [1.2, 3]), and is a departure from and inconsistent with the teaching of the Book of Common Prayer (Ruling Principles [1.4]).

We desire also that the Appellate Tribunal should consider the following matters.

Introduction

It is not our intention to mount a biblical argument against same-sex marriage. We are sure that others will do this better than we. The members of EFAC WA are conversant with the teaching of Holy Scripture pertinent to sexual relations between members of the same sex, and that anal intercourse between men is forbidden by the moral law of the Old Testament (not just civil or ceremonial or purity), and nations were condemned for practicing it; it is therefore to be considered as the law of Christ, and is forbidden many times over in the New Testament. Its practice is said to bar entry to the kingdom of God (along with other sins). It is a gospel matter, therefore, "required for salvation". Those who practice such things are, therefore, called on to repent. Though it is often claimed that Jesus said nothing on the matter, he ministered to a people who had long regarded it as a sin, and it is included in his words on fornication. We are aware that attempts have been made to "re-interpret" this teaching, but can only view this as "mis-interpretation", and an attempt to overthrow the plain meaning of Scripture. We are also aware that this plain understanding has been held by the whole Church from its beginning.

Our Role as Ministers of Christ

The Evangelical Fellowship in the Anglican Communion WA is composed for the most part of Anglican bishops, priests and deacons. The solemnizing of marriages is one of our official functions.

In accordance with the Book of Common Prayer (and authorized revisions) we declare to marrying couples and attendant congregations that

"... we are gathered in the sight of God, and in the face of this Congregation, to join together **this man and this woman** in holy Matrimony ..."

We explain further that this 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 ..."

That it is

"... commended of St Paul to be honourable among all men ..."

And that it is to be entered upon

"... duly considering the causes for which matrimony was ordained."

One of which is

"... **the procreation of children**, to be brought up in the fear and nurture of the Lord, and to the praise of his holy Name."

From this forthright declaration of the Solemnization of Matrimony we infer

That marriage is between a man and a woman

That marriage is of divine origin

That it declares a Christian (gospel) reality

That one of its primary purposes is the procreation and nurture of children in the fear of God.

Furthermore, we regularly warn those about to be married,

"I require and charge you both, as ye will answer at the dreadful day of judgement, when the secrets of all hearts shall be disclosed, that if either of you know any impediment, why ye may not lawfully be joined together in Matrimony, ye do now confess it. For be ye well assured, that so many as are coupled together otherwise than God's Word doth allow are not joined together by God; neither is their matrimony lawful."

From this we infer that it is the teaching of our Church (as of Holy Scripture)

That it is possible to be "coupled", but not married.

That there is divine law (laws) pertinent to marriage, which if they are ignored render the marriage not-marriage.

That such couplings are not joined by God, and not lawful (according to God's law).

We wish it to be understood that when we declare a man and a woman "man and wife" we do it "in the Name of the Father and of the Son and of the Holy Spirit", and when we bless them we do it in the same Name and under the same authority.

We do not have authority to bless in this formal way (declaring God's blessing) what God has not blessed, and which indeed, in this case, he has declared to be sin.

Were such a blessing to be authorized by our Church

It would override God's Word with a human novelty.

It would make of marriage a purely human estate.

It would remove from the Church's ministers their present authority to declare God's Word and bless in his Name.

Were a synod of our Church to adopt such a resolution,

We would regard such resolution as contrary to the law of God and the gospel of salvation and therefore not lawful or binding.

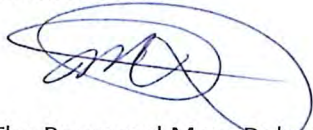
In the case of a synod of a diocese in which we ministered, we would be obliged to declare that we did not recognize the authority of our synod to adopt such a regulation contrary to God's law.

And were a bishop, priest or deacon to bless and teach according to such regulation, we would be bound under God to regard such a minister as a heretic and a false shepherd.

We believe such a course of action would be forced on many faithful ministers of our Church, and that many church members would flee from pastoral oversight which is so evidently contrary to Scripture and tradition.

Therefore, we humbly entreat the members of the Appellate Tribunal to consider this matter with the greatest care and not to allow this resolution of the Synod of Wangaratta to stand, which, if it were allowed, would bring great harm upon our Church.

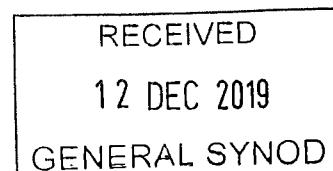
Yours in Christ

A handwritten signature in blue ink, appearing to be 'M Dale', enclosed within a blue oval.

The Reverend Marc Dale, Chair

The Evangelical Fellowship in the Anglican Communion, Western Australia

11 December 2019



15

To.
Registrar Appellate Tribunal,
Anglican Church of Australia.

Primate's Reference to the Appellate Tribunal – Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019 (Diocese of Wangaratta)

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. ^[1] _{SEP}

Contradictory blessing

According to our Ruling Principles, our doctrine and principles are embodied in the Book of Common Prayer. In the marriage service, marriage is defined as between one man and one woman, as assumed in the very opening rubric directing “the Man on the right hand and the Woman on the left”. In the Preface, the priest states that marriage was instituted by God, “signifying unto us the mystical union that is betwixt Christ and his Church.” There is no other marriage that this Church recognises than that between one man and one woman entered into voluntarily for life. The priest announces his blessing on “this man and this woman”, and there is no other union that can represent the union that is between Christ and his Church. We are not free to bless that which God does not bless. The Synod of the Diocese of Wangaratta is acting apart from this Church in seeking to bless any other relationship as a “marriage” and therefore is acting inconsistently with our Fundamental Declarations and Ruling Principles.

Redefinition of civil marriage does not redefine marriage according to the Anglican church of Australia

This Church has for many years been debating the nature and definition of marriage. The General Synod (GS) resolution of 2017, “**Marriage, same-sex marriage and the blessing of same-sex relationships**,” recognised that this has been discussed for fifteen years and that session of GS itself, “the doctrine of our church, in line with traditional Christian teaching, is that marriage is an exclusive and lifelong union of a man and a woman”. This Church has consistently affirmed this view of marriage. The Marriage Act 1961 has recently redefined marriage according to Commonwealth of Australia law, but it has now jurisdiction to redefine marriage according to the doctrine of the Church. Our fundamental declarations are clear that the “canonical scriptures of the Old and New Testaments as being the ultimate rule and standard of faith.” So any regulations that seek to “bless” a union defined by the state as a marriage cannot be consistent with the doctrine of the Church if that union is not a marriage. The Diocese of Wangaratta has created a new service of

blessing based entirely on the civil redefinition of marriage and stands against the current agreement of the doctrines of this Church.

“Conscientious objection”

The Synod of the Diocese of Wangaratta’s BLESSING OF PERSONS MARRIED ACCORDING TO THE MARRIAGE ACT REGULATIONS 2019 itself assumes there will be “conscientious objectors”, thus admitting it is doing something controversial. However, it is telling that within it’s guidelines to those with conscientious objections, it shows no understanding of the fact that the legislation has far reaching consequences, well beyond what one individual minister, or even, one individual diocese might think right or wrong. It almost arrogantly states, “that minister may refer the couple seeking such a blessing to a minister who is willing and able to conduct the service.” If it is a matter of conscience not to conduct such a service, it will surely be matter of conscience to promote it. The proposed legislation is itself an affront to the Constitution of the Anglican Church of Australia. It shows complete disregard for the fact that the Constitution is based on there being a national unity, referring to itself as “This church” not “these churches”.

Intentionally divisive

The General Synod of this Church was asked, in 2017, “to facilitate a respectful conversation in our church by means of a collection of essays on marriage and same-sex relationships that explores Scriptural and theological issues”. This acknowledges that there are clearly diverse views but shows a desire to converse and continue together as a national Church. The essays have been produced, but GS has not yet met to discuss them or make any decisions regarding their content. The Diocese of Wangaratta is showing “disrespect” towards this Church and the process of “conversation” over this issue by acting in such an intentionally divisive way.

For the above reasons, it is my strong conviction that what is proposed by the Synod of the Diocese of Wangaratta is most decidedly not consistent with the doctrine of this Church nor is it 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. ^[1]_{SEP}

Intentional misuse of category

For the reasons outlined above, I believe that the proposed form of service is inconsistent with the doctrine and the Fundamental Declarations and Ruling Principles in the Constitution of the Anglican Church of Australia. At the very least, there is no way what the Diocese of Wangaratta is

proposing is contentious. So it would be impossible to claim that a service for the *Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019* is merely covering a circumstance “for which no provision is made” as the CANON CONCERNING SERVICES 1992 allows for. That provision is for circumstances that have broad agreement within the Church but, at this point, have no formal liturgy. That category does not apply in the case of the Wangaratta Diocese’ proposal and it is not acting in good faith to suggest otherwise. To this point, the Anglican Church of Australia recognises marriage as only that which is between one man and one woman. To recognise any other definition of marriage is to act outside of the doctrine of this Church and to be inconsistent with the Fundamental Declarations and Ruling Principles in the Constitution of the Anglican Church of Australia.

3. Whether, in light of the determinations to be made in Questions 1 & 2, the Regulations are validly made pursuant to the *Canon Concerning Services 1992*. [1] [2]

According to the Canon Concerning Services 5 (3),

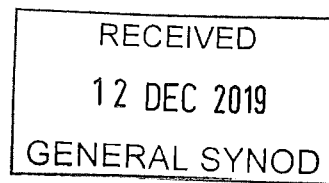
All variations in forms of service and all forms of service used must be reverent and edifying and must not be contrary to or a departure from the doctrine of this Church.

As service that goes against the Doctrines of the Church can by no means claim to be “reverent”. To “edify” is, literally, to “build”, and so a service that is already tearing at the fabric of our Constituted Church can by no means claim to be edifying.

The proposal of the Synod of the Diocese of Wangaratta has the character of a schismatic group who has no regard for the national body it is part of, or of the Doctrine that unites us, or the Fundamental Declarations and Ruling Principles that help define us, and it grievously shows no regard for the repercussions its actions might have.

I therefore ask that the Appellate Tribunal find that the Regulations are not validly made pursuant to the *Canon Concerning Services 1992*, and as such that it be deemed inconsistent with our Doctrine and unconstitutional and therefore disallowed.

Gordon Killow.
Kallaroo WA 6025



16₁

RAFT Anglican Church
(All Souls Church in the parish of Ferntree Gully and Rowville)
131 Taylors Lane
Rowville
VIC
3178

12 December 2019

The Registrar
Appellate Tribunal - General Synod Office
Anglican Church of Australia
Suite 4, Level 5
189 Kent Street
Sydney
NSW
2000

Dear Ms Hywood,

Appellate Tribunal Submission

Please find below the submission from RAFT Anglican Church to the Appellate Tribunal concerning PRIMATE'S REFERENCE UNDER SECTION 63 OF THE CONSTITUTION - Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019 (Wangaratta).

Yours in Christ,
Hilton Jordan
Agent of Communication on behalf of RAFT Anglican Church

Introduction

We, the people of RAFT Anglican Church, submit that the answers to the two questions referred by the primate of the Anglican Church of Australia to the Appellate Tribunal (5 September 2019) are:

1. That the regulation Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019 made by the Synod of the Diocese of Wangaratta is **not** consistent with the Fundamental Declarations and Ruling Principles in the Constitution of the Anglican Church of Australia.
2. That the regulation is **not** validly made pursuant to the Canon Concerning Services 1992.

Concerning Question 1:

1.1. On the Matter of Persons Married According to the Marriage Act 1961:

Since the Marriage Amendment (Definition and Religious Freedoms) Act 2017 came into effect on 9 December 2017, Australian federal marriage law has legalised same-sex marriage. The result of this legislation, pertinent to the two questions put by the primate of the Anglican Church of Australia to the Appellate Tribunal, is that a civil marriage can therefore also take the form of a same-sex marriage.

It is for this reason that we will argue:

1. That the regulation Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019 made by the Synod of the Diocese of Wangaratta is **not** consistent with the Fundamental Declarations and Ruling Principles in the Constitution of the Anglican Church of Australia.
2. That the regulation is **not** validly made pursuant to the Canon Concerning Services 1992.

1.2. On the Matter of Blessing:

It is imperative that one understand what is meant by 'blessing' in the Holy Scriptures, God's Word, if one is to respond correctly to these two questions put by the primate. On this point we commend the essay "To what end? The blessing of same-sex marriage" written by the Reverend Canon Dr Rhys Bezzant in the collection of essays published by the Doctrine Commission of the Anglican Church of Australia in June 2019 entitled: *Marriage, Same-Sex Marriage and the Anglican Church of Australia*.

It is our conviction that, as Bezzant has written: "The language of blessing cannot serve the generic purpose of encouragement, but has a distinct shape within the biblical narrative, to which we must pay attention. If blessing affirms and promotes the divine order, but homosexual practice is sinful, then it is not possible to bless a homosexual union in the name of a holy God." (p.231)

In addition, we concur with Bezzant's conclusion: "In summary, applying the language of blessing to same-sex unions in liturgical contexts is at odds with our own liturgical heritage, modest application of priestly practices, and the place of marriage in an economy of grace ... We cannot bless all human relationships regardless of their shape, given our understanding that God will discriminate between us 'according to our works' (Rom 2:6)." (pp.234-235)

2.1. On the Matter of the Fundamental Declarations in the Constitution of the Anglican Church of Australia:

2.1.1. Fundamental Declaration 1:

The first fundamental declaration affirms: "The Anglican Church of Australia, being a part of the One Holy Catholic and Apostolic Church of Christ, holds the Christian Faith as professed by the Church of Christ from primitive times and in particular as set forth in the creeds known as the Nicene Creed and the Apostles' Creed." (Part 1, Ch.I, §1, p.2)

In the Apostles' Creed we read the words: "I believe in the Holy Spirit, the holy catholic Church". In the Nicene Creed we read the words: "We believe in one holy catholic and apostolic Church."

Paul, the apostle of the Lord Jesus Christ, writes concerning marriage:

Husbands, love your wives, just as Christ loved the church and gave himself up for her, in order to make her holy by cleansing her with the washing of water by the word, so as to present the church to himself in splendour, without a spot or wrinkle or anything of the kind—yes, so that she may be holy and without blemish. In the same way husbands should love their wives as their own bodies. He who loves his wife loves himself. For no one ever hated his own flesh, but nourishes and cherishes it, just as Christ does the church, because we are members of his body. "Therefore a man shall leave his father and mother and hold fast to his wife, and the two shall become one flesh." This mystery is profound, and I am saying that it refers to Christ and the church. However, let each one of you love his wife as himself, and let the wife see that she respects her husband. (Ephesians 5:25-33 ESV)

The "holy catholic Church" or the "one holy catholic and apostolic Church" is identified by the apostle of Christ as the bride of Christ. The biblical teaching on marriage is thus profoundly and inextricably joined with the teaching on the church. In addition, marriage is therefore clearly a teaching of the church and a matter of faith.

According to the constitution of the Anglican Church of Australia: "Doctrine" means the teaching of this Church on any question of faith. To suggest that marriage is not doctrine but merely ceremony is, therefore, inaccurate and misleading.

To bless a civil marriage between two people of the same sex thus implicitly contradicts "the Christian Faith as professed by the Church of Christ from primitive times" and thus contravenes the first Fundamental Declaration of the Anglican Church of Australia.

2.1.2. Fundamental Declaration 2:

The second fundamental declaration affirms: "This 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." (Part 1, Ch.I, §2, p.2)

In the second chapter of the Old Testament we read:

But for Adam there was not found a helper fit for him. So the LORD God caused a deep sleep to fall upon the man, and while he slept took one of his ribs and closed up its place with flesh. And the rib that the LORD God had taken from the man he made into a woman and brought her to the man. Then the man said,

"This at last is bone of my bones
and flesh of my flesh;
she shall be called Woman,
because she was taken out of Man."

Therefore a man shall leave his father and his mother and hold fast to his wife, and they shall become one flesh. And the man and his wife were both naked and were not ashamed. (Genesis 2:20b-25 ESV)

The foundational book of Scripture, therefore, perspicuously reveals that the institution of marriage was created by God for one man and one woman.

This teaching, that marriage as God has created it is for one man and one woman for life, is so well established in the New Testament that this doctrine is even used to teach other doctrines.

For example, in the epistle the Lord Jesus' apostle wrote to the church in Rome, Paul uses this doctrine to illustrate his teaching on the subject of the law:

Or do you not know, brothers - for I am speaking to those who know the law - that the law is binding on a person only as long as he lives? For a married woman is bound by law to her husband while he lives, but if her husband dies she is released from the law of marriage. (Romans 7:1-2 ESV)

To bless a civil marriage between two people of the same sex thus explicitly contradicts "the canonical scriptures of the Old and New Testaments ... the ultimate rule and standard of faith given by inspiration of God" and thus contravenes the second fundamental declaration of the Anglican Church of Australia.

2.1.3. Fundamental Declaration 3:

The third fundamental declaration affirms: “This Church will ever obey the commands of Christ, teach His doctrine ... follow and uphold His discipline” (Part 1, Ch.I, §3, p.2)

In Matthew’s Gospel we read Christ’s response to the Pharisees who tested him:

He answered, “Have you not read that he who created them from the beginning made them male and female, and said, ‘Therefore a man shall leave his father and his mother and hold fast to his wife, and the two shall become one flesh’? So they are no longer two but one flesh. What therefore God has joined together, let not man separate.” (Matthew 19:4-6 ESV)

The Lord Jesus Christ unequivocally taught that marriage has been instituted by God and is a lifelong covenant between a man and a woman to the exclusion of all others.

To bless a civil marriage between two people of the same sex thus clearly contradicts the doctrine of Christ and thus contravenes the third fundamental declaration of the Anglican Church of Australia.

2.2. On the Matter of the Ruling Principles in the Constitution of the Anglican Church of Australia:

2.2.1. Retaining and Approving the Doctrine and Principles of the Church of England Embodied in the Book of Common Prayer:

Section 4 of the Ruling Principles states: “This Church, being derived from the Church of England, retains and approves the doctrine and principles of the Church of England embodied in the Book of Common Prayer ...” (Part 1, Ch.II, §4, p.2)

The Book of Common Prayer (1662) contains “The Form of the Solemnization of Marriage” and the introduction of that service begins with the following words:

Dearly beloved, 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 of God in the time of man’s innocency, signifying

unto us the mystical union that is betwixt Christ and his Church ... (The Solemnization of Marriage - BCP 1662)

This service patently teaches that holy matrimony was instituted by God between a man and a woman as part of God's good creation. In addition, this service teaches that marriage signifies the union between Christ and his bride, the Church.

This service also concludes with a blessing upon the marriage of the newly wedded man and woman referencing God creating the institution of marriage between a man and a woman - not two people of the same sex - which reads:

Almighty God, who at the beginning did create our first parents, Adam and Eve, and did sanctify and join them together in marriage: Pour upon you the riches of his grace, sanctify and bless you, that ye may please him both in body and soul, and live together in holy love unto your lives' end. Amen. (The Solemnization of Marriage - BCP 1662)

To bless a civil marriage between two people of the same sex thus clearly contradicts the Book of Common Prayer and the service for "The Solemnization of Holy Matrimony" and thus contravenes the ruling principles of the Anglican Church of Australia.

2.2.2. Retaining and Approving the Doctrine and Principles of the Church of England Embodied in the Articles of Religion:

Section 4 of the Ruling Principles also states: "This Church, being derived from the Church of England, retains and approves the doctrine and principles of the Church of England embodied ... in the Articles of Religion sometimes called the Thirty-nine Articles ..." (Part 1, Ch.II, §4, p.2)

Article XXXV - entitled "Of the Homilies" - states:

The second Book of Homilies, the several titles whereof we have joined under this Article, doth contain a godly and wholesome Doctrine, and necessary for these times ... and therefore we judge them to be read in Churches by the Ministers, diligently

and distinctly, that they may be understood of the people. Of the Names of the Homilies ... 18 Of the State of Matrimony ... (Article XXXV).

Thus the Anglican Church of Australia approves the doctrines and principles taught in Homily 18 entitled "Of the State of Matrimony". The eighteenth homily begins with the following words:

The word of Almightye GOD doth testifie and declare, whence the originall beginning of Matrimony commeth, and why it is ordained. It is instituted of GOD, to the intent that man and woman should liue lawfully in a perpetuall friendship, to bring forth fruite, and to auoide Fornication. (original spelling retained; The Second Book of Homilies)

It is clear that Homily 18 teaches that matrimony was instituted by God for one man and one woman - not two people of the same sex - for life.

To bless a civil marriage between two people of the same sex thus clearly contradicts the Articles of Religion - specifically Article XXXV - and thus contravenes the ruling principles of the Anglican Church of Australia.

2.2.3. The Book of Common Prayer, Together with the Thirty-nine Articles, be Regarded as the Authorised Standard of Worship and Doctrine in this Church

The same fourth section of the Ruling Principles states:

Provided, and it is hereby further declared, that the above-named Book of Common Prayer, together with the Thirtynine Articles, be regarded as the authorised standard of worship and doctrine in this Church, and 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. (Part 1, Ch.II, §4, pp.2-3)

In view of the clear teaching in both the Book of Common Prayer and the Articles of Religion - as demonstrated above - that marriage is between a man and a woman and not two people of the same sex; it is evident that a service or liturgy for the blessing of a same-sex civil

marriage would indeed be an alteration or variation “from the services or Articles” that would contravene principles of doctrine or worship laid down in these standards.

2.2.4. The Anglican Church of Australia is Subject to the Fundamental Declarations and the Ruling Principles

The fifth section of the Ruling Principles states:

Subject to the Fundamental Declarations and the provisions of this chapter this Church has plenary authority and power to make canons, ordinances and rules for the order and good government of the Church, and to administer the affairs thereof. Such authority and power may be exercised by the several synods and tribunals in accordance with the provisions of this Constitution. (Part 1, Ch.II, §5, pp.3)

It is imperative to note that the plenary authority granted to the “several synods and tribunals” of the Anglican Church of Australia is conditional upon that power being exercised “in accordance with the provisions of this Constitution” and is “subject to the Fundamental Declarations and the provisions of this chapter [the Ruling Principles]”.

It is quite clear - as evidenced above - that a service or liturgy for the blessing of a same-sex civil marriage contravenes both the Fundamental Declarations and the Ruling Principles of the Anglican Church of Australia, as outlined above, and is therefore unconstitutional.

Concerning Question 2:

3.1. On the Matter of the Canon Concerning Services 1992:

Among the documents supplied by the Appellate Tribunal on Thursday 7 November 2019 is the file named “4. Canon Concerning Services in effect in Wangaratta 2019.pdf” which is entitled “CANON CONCERNING SERVICES 1992; Canon 13, 1998”. In part 5 section 3 it reads:

5. (3) All variations in forms of service and all forms of service used must be reverent and edifying and must not be contrary to or a departure from the doctrine of this Church.

This regulation stipulates two basic requirements of “all variations in forms of service” namely: firstly, that all forms of service used “must be reverent and edifying”; and, secondly, that all forms of service “must not be contrary to or a departure from the doctrine of this Church”.

3.1.1. Must be Reverent and Edifying

The word ‘reverent’ refers to that which “shows deep and solemn respect”. This deep and solemn respect must primarily and ultimately be directed by the worshippers toward the One being worshipped, that is, God Almighty - Father, Son, and Holy Spirit.

For a form of service to be reverent, therefore, it must be in accordance with God's Word - and not contrary to God's Word - in order that God may be given the deep and solemn respect which is required by this canon.

A form of service which blesses a same-sex civil marriage straightforwardly contradicts the Word of God - as asserted above - and as such is irreverent and therefore contravenes this canon.

The word ‘edifying’ refers to that which “builds up”. This building up self-evidently refers to those worshipping the all-sufficient, aseitic God - Father, Son, and Holy Spirit.

This language thus demands that the content of a form of service should be in keeping with God's Word - and not opposed to God's Word - in order that the worshippers are better able to worship God as required by this canon.

A form of service which blesses a same-sex civil marriage plainly denies the Word of God - as asserted above - and as such is unedifying and therefore contravenes this canon.

3.1.2. Must Not be Contrary to or a Departure from the Doctrine of this Church

This regulation also stipulates one prohibition of “all variations in forms of service”; namely, that a form of service “must not be contrary to or a departure from the doctrine of this Church”.

It has already been established, above, that marriage is indeed a doctrine of the church and that marriage has been historically taught from the Holy Scriptures as: instituted by God as an exclusive relationship between one man and one woman for life.

A form of service, such as that proposed by the Synod of the Diocese of Wangaratta which allows for the blessing of same-sex civil marriages, without doubt contradicts the doctrine of the Anglican Church of Australia and so evidently violates this regulation of the “Canon Concerning Services 1992; Canon 13 1998”.

Conclusion

Therefore, we, the people of RAFT Anglican Church, submit that the answers to the two questions referred by the primate of the Anglican Church of Australia to the Appellate Tribunal (5 September 2019) are:

1. That the regulation Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019 made by the Synod of the Diocese of Wangaratta is **not** consistent with the Fundamental Declarations and Ruling Principles in the Constitution of the Anglican Church of Australia.
2. That the regulation is **not** validly made pursuant to the Canon Concerning Services 1992.

IN THE APPELLATE TRIBUNAL

ANGLICAN CHURCH OF AUSTRALIA

IN THE MATTER OF questions referred by the Primate –

Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019 (Wangaratta)

I refer to the notification by the Primate on 21 October 2019 and make the following submission:

Question 1

I submit that the form of service referred to above (hereinafter referred to as “the Regulations”) is not consistent with the doctrine of this Church and is not consistent with the Fundamental Declarations and Ruling Principles in the Constitution of the Anglican Church of Australia.

1. The Constitution of the Anglican Church of Australia firmly grounds the faith and doctrine of the Church in the Holy Scriptures in Part 1 Chapter 1 under the heading “Fundamental Declarations” which by the very heading emphasises the vital importance of the following statements:
 1. The Anglican Church of Australia, being a part of the One Holy Catholic and Apostolic Church of Christ, holds the Christian Faith as professed by the Church of Christ from primitive times and in particular as set forth in the creeds known as the Nicene Creed and the Apostles' Creed.
 2. This 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.
 3. This Church will ever obey the commands of Christ, teach His doctrine, administer His sacraments of Holy Baptism and Holy Communion, follow and uphold His discipline and preserve the three orders of bishops, priests and deacons in the sacred ministry.
2. The Church’s foundation on Scripture is also affirmed in Article 6 of the 39 Articles of Religion.
3. The teaching of Scripture¹ is clear that marriage is a creation event and between one man and one woman as affirmed by Jesus². Scripture does not state, imply or allude to any form of union other than between a man and a woman that is in accordance with God’s plan for creation. Scripture does however condemn same-sex intimacy³.
4. In accordance with Scripture, the Church’s teaching on marriage is reflected in “The Form of Solemnization of Matrimony” as contained in the Book of Common Prayer which states, inter-alia, “... to join together this man and this woman in holy Matrimony, which 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;”.

5. The Regulations' operative section is to bless civil marriage other than between one man and one woman and purports to do this on the basis that the blessing of a civil marriage is not a marriage service. Yet the very intent of this regulation is to seek God's blessing and favour on two people who have married, that in essence would be viewed as the same outward sign as Christian marriage.
6. As the Church holds the Scriptures "as being the ultimate rule and standard of faith given by inspiration of God"⁴ and that Scripture nowhere endorses same-sex intimacy but rather condemns it, such union is outside the will of God and cannot be blessed.
7. The church as well as the broad community have held that marriage is between a man and a woman for millennia except for a handful of years very recently. Though changed community attitudes do pose serious pastoral questions and needs for the church, the response must be in accordance with the church's doctrine, declarations and principles and first and foremost in accordance with God's will as spoken in the Scriptures. The church must be diligent and faithful in not being persuaded to act contrary to God's will⁵.

Question 2

I submit that the use of any form of service referred to is not consistent with the doctrine of this Church and is not consistent with the Fundamental Declarations and Ruling Principles in the Constitution of the Anglican Church of Australia for reasons stated above.

Question 3

I submit that the Regulations are therefore not validly made pursuant to the Canon Concerning Services 1992.

Glenn Muskett

11 December 2019

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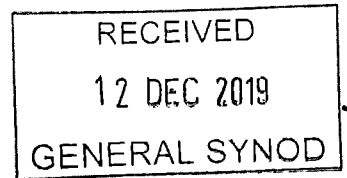
¹ Genesis 1-2, Leviticus 18

² Matthew 19

³ Romans 1, 1 Corinthians 6

⁴ Constitution, Chapter 1, 2

⁵ 2 Timothy 4



THE APPELLATE TRIBUNAL OF THE ANGLICAN CHURCH OF AUSTRALIA

A submission in response to the Primate's reference of the *Blessing of Persons Married*

According to the Marriage Act 1961 Regulations of the Synod of Wangaratta.

Submission by the New Cranmer Society

The New Cranmer Society is a group of lay and clergy, primarily within the Diocese of Melbourne, who seek to encourage and promote traditional orthodox doctrine and practice and come from both the evangelical and conservative Anglo-Catholic traditions of the Anglican church. This submission sets out our response to 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**), namely the questions:

- Whether the Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019 made by the Synod of the Diocese of Wangaratta is consistent with the Fundamental Declarations and Ruling Principles in the Constitution of the Anglican Church of Australia.
- Whether the regulation is validly made pursuant to the *Canon Concerning Services* 1992.

Our submission also addresses the questions posed by 41 members of the General Synod regarding the Regulations in the reference dated 14 October 2019 (**GS Member Reference**).

The New Cranmer Society submits that the Appellate Tribunal should answer the Primate's Reference as follows with regard to the Questions regarding the Diocese of Wangaratta:

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

Question 2: The Regulations are not validly made.

With regard to the GS Member Reference we submit that the Appellate Tribunal should answer 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.

Submission of the Diocese of Wangaratta

We note the response given by the Diocese of Wangaratta to the Primate's Reference.

The argument being advanced by the Diocese of Wangaratta is of three main parts.

The first and primary argument is that the Regulations do not touch on doctrine but only ceremony. If this were true, the Diocese of Wangaratta implies that no question needs to be answered about whether the Regulations are consistent with the Constitution of the Anglican Church of Australia.

The second argument is that the Wangaratta synod was free to make the Regulations because no authorised service existed for blessing a civil marriage.

The third argument is that even if marriage is properly seen as being a question of doctrine then this would only apply to “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.” (Quote from Wangaratta’s submission).

Response by the New Cranmer Society

We wish to make a number of comments on the issue raised by the Primate’s Reference, the GS Member Reference and with the response of the Diocese of Wangaratta to these questions.

1. We note that a form of service for the blessing of civil marriages has been available for some years (a product of the Liturgy Commission) and can be downloaded from the website of the Anglican Church of Australia. See:

<https://anglican.org.au/wp-content/uploads/2019/05/Blessing-of-a-Civil-Marriage.pdf>

(Accessed: 10.50am 9/12/2019).

A Bishop of a Diocese could choose to authorise this service for use in blessing a civil marriage without creating a new service. Therefore, in making the Regulations, the Diocese of Wangaratta is specifically seeking to do something for which the existing

service is not adequate (presumably in part because the current service includes the words “Scripture teaches that marriage is a lifelong partnership uniting a woman and a man in heart, mind and body” and this would not allow the blessing of same sex couples).

It therefore seems self-evident to us that the Diocese of Wangaratta is doing something of doctrinal import by eliminating this summary of Scriptural teaching from their new service. This Scriptural teaching about the nature of marriage is not a statement reserved only for “Christian marriage” but, by its inclusion in the Liturgy Commission’s civil marriage blessing service, is intended to be applied to any civil marriage being blessed. The Diocese of Wangaratta and others within the Anglican Church of Australia may respectfully and sincerely disagree with the statement that “Scripture teaches that marriage is a lifelong partnership uniting a man and a woman”. But we submit that this disagreement is fundamentally doctrinal in nature and should be dealt with in the appropriate forums for doctrinal disagreements and not be treated as merely a matter of ceremony, ritual or discipline.

We note that the BCP, including its liturgies, is included as a foundational document that shapes Anglican doctrine. The Anglican church has always found its teaching and doctrine within the services prescribed by the BCP and as such it is particularly important that the doctrinal implications of new services are carefully considered and treated with the seriousness that this Anglican tradition deserves.

2. We are troubled by the precedents and consequences that the approach of the Diocese of Wangaratta will have. The Regulations seek to authorise a service for the blessing of any civil marriage made under a particular Australian law. This law can, and has, been amended in ways that differ markedly from previous forms. Therefore, there is a possibility that further amendments, perhaps even radical amendments, could happen again in the future.

If we allowed the Regulations proposed by the Diocese of Wangaratta we would have guaranteed approval and blessing of whatever form of marriage might be legislated by the Parliament of Australia at any time in the future. While the Diocese of Wangaratta may be comfortable with the definition of marriage currently legislated for by the Marriage Act 1961, the same might not be true in the future. Yet this form of Regulation would have removed a mechanism for making such distinctions.

Even if the Appellate Tribunal is convinced by arguments that blessing same sex civil marriages made under the Marriage Act 1961 does not have doctrinal implications for the Anglican Church of Australia, we believe that the form of the Regulations as proposed leaves so much discretion over the definition of marriage in the hands of a secular body (the Australian Parliament) that the Regulations themselves necessarily carry the possibility of a doctrinal clash between the Marriage Act and the position of the church on what forms of union it is prepared to bless.

Therefore, the Regulations must be treated as pertaining to the doctrine of the Church.

3. We believe that “blessing” necessarily implies approval or endorsement. A blessing of a relationship or union is the pronouncement of God’s blessing on the union. Indeed, the fact that couples married in a civil ceremony seek a blessing service, especially one which recalls and reaffirms the vows they have taken, is a clear sign that they are looking for a signal of the endorsement and approval of God (and the church) on their relationship.

We believe that a further indication of the importance of blessing is the fact that it is reserved for priests in the order of the Anglican church. Blessing means more than wishing someone well or even praying for them. The office of priest is one which the church is careful about discerning and ordaining people to precisely because they will be charged with the responsibility of pronouncing God’s blessing, absolving sins and presiding at communion.

In light of this, pronouncing a blessing on a union through a new authorised service is claiming something about God’s approval of that union. If it were pronouncing blessings on the people within a civil union but without implying anything about God’s approval of the form and structure of the union itself then a new form of service would not be required.

4. We submit that “the definition of doctrine as meaning the ‘teaching of the Church on any matter of faith’” cannot be held to merely encompass beliefs and not also the practices and ethics that flow from those beliefs. Such an interpretation of a ‘matter of faith’ would be profoundly out of line with the history of Christian thought.

The most frequent Biblical references to things which can put someone outside the kingdom of heaven concern not right belief but rather right practice. Thus idolators, the greedy and the sexually immoral are the main focus in Paul’s letters for warnings that they stand condemned (for example, 1 Corinthians 6:9-10). Jesus spoke of those who say “Lord, Lord” but do not follow up their words with right actions (Matthew 7:21). Actions and salvation are inextricably linked (for example James 2: 18 – 19: “Show me your faith without deeds, and I will show you my faith by my deeds. You believe that there is one God. Good! Even the demons believe that—and shudder.”) Without wishing to downplay the importance of right belief, the ethics implied by such beliefs are also critical and, according to the Bible, are vital for salvation. The injunctions of Scripture, therefore, about such actions are doctrinal matters that go to the heart of the Gospel and to questions of salvation.

5. The Diocese of Wangaratta states that “any argument about the content of the Church’s teaching which is based on disputed interpretation of Scripture cannot meet the definition of doctrine under the Constitution.” This statement appears to be based on an assumption that anything on which church members disagree because of different readings of Scripture must be outside of the definition of doctrine by the very fact of them disagreeing about it.

This leads to the absurd position that any diocese could at any time authorise a service, no matter how wildly antithetical to previously understood Christian doctrine, and claim authority to do so because by definition their disagreement with the rest of the Christian world on the issue proves that it is not a matter of doctrine but only of ceremony and therefore entirely at their own discretion. This cannot be a valid interpretation and is in any case a circular argument.

6. Finally, we disagree with the submission of the Diocese of Wangaratta that the BCP and the Canons of General Synod deal with marriage as a rite of the Church and as a matter relating to ceremony and discipline but not as a doctrine. The BCP instructions about who may lawfully use the marriage service and under what circumstances are indeed ceremonial and pertaining to discipline. But the words of the marriage service itself:

“Dearly beloved, 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 of God in the time of man's innocency, signifying unto us the mystical union that is betwixt Christ and his Church”

and also, for example,

“It was ordained for the procreation of children, to be brought up in the fear and nurture of the Lord, and to the praise of his holy Name.”

must properly be understood as teaching on the nature of marriage as God ordained, not as statements of what the Church is at the present time permitting. We also note that the theological basis for God’s institution of marriage as outlined in the BCP is based in creation and therefore can reasonably be taken to apply both within the Church and outside it. This is presumably why the Liturgy Commission was happy to propose the form of blessing of civil marriages which exists on the website of the Anglican Church of Australia and which closely mirrors the prayer book marriage service.

The Church’s decision to allow divorced persons to remarry in the Church did not change this teaching about the nature of marriage. It allowed for the brokenness and fallenness of human beings while emphatically continuing to uphold the institution of marriage as ordained by God and taught in the BCP marriage service.

Conclusion

Section 5 of the Constitution provides that:

“Subject to the Fundamental Declarations and the provisions of this chapter [ie the Ruling Principles] this Church has plenary authority and power to make canons, ordinances and rules for the order and good government of the Church, and to administer the affairs thereof. Such authority and power may be exercised

by the several synods and tribunals in accordance with the provisions of this Constitution.”

It follows that the Wangaratta Regulations are invalid if they are inconsistent with the Fundamental Declarations or the Ruling Principles. We submit that the Regulations are inconsistent and therefore are invalid.

We acknowledge that there is sincere disagreement between Christians in the Anglican Church of Australia as to whether same sex marriage is a valid signification of “the mystical union that is betwixt Christ and his church”. We believe that theological debate on this matter is necessary and should happen within the proper forums for such debate which are provided in the Anglican Church of Australia. If indeed the position of the Anglican Church of Australia is to change on this issue it would be far better, and ultimately more unifying, for the Church to discern together and decide together on its position.

Like many people, New Cranmer Society members wish to show love and support to our same-sex attracted brothers and sisters. For a number of us it is a matter of some grief that our reading of Scripture does not permit us to endorse and bless same-sex marriages.

However, it is our belief that the current position of the Anglican Church of Australia on the doctrine of marriage is the only one that is consistent with the Fundamental Declarations and with Scriptural teaching on the issue.

Allowing the new service proposed by the Diocese of Wangaratta to be authorised would not only short-circuit proper theological debate but in our view is clearly taking a doctrinal position which means that the Regulations are not able to be validly made.

IN THE APPELLATE TRIBUNAL OF THE 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

SUBMISSION BY FIONA D. McLEAN

1. How I am an interested party

1.1 I am a lifelong Anglican, involved in my local Anglican church, St Stephen's, Greythorn (Diocese of Melbourne), and on staff at St Jude's, Carlton (Diocese of Melbourne) as an authorised stipendiary lay minister. In my role at St Jude's, I work with a congregation of young adults, most of whom are university students, who are confronted with questions about how their Christian faith affects their sexuality and morality. A number of them experience same-sex attraction. Those who are Christians are seeking to know and obey God's commands regarding sexuality, and so it is of vital pastoral importance that the Church is clear about what is and is not blessed by God in this regard.

1.2 I serve the Anglican Church of Australia in various governance roles, including on the Council of the Diocese of Melbourne (Archbishop in Council), General Synod, the Standing Committee of General Synod and on the Board of Electors for the Primatial Election.

1.3 I am on the board of Gafcon Australia, and so acutely aware of how this issue has been divisive and painful in many other parts of the world. I value our connection with other Anglicans worldwide (and in centuries past) and am deeply concerned about the fact that this issue has impaired or broken fellowship in many parts of the world – including in the USA, Canada, Scotland, Brazil, and, more recently, New Zealand.¹ I am also concerned for those in the Anglican Church of Australia who are troubled, confused or distressed by the conflict in our church over these issues.

¹ See the book by Vaughan Roberts and Peter Jensen, *Faith in a Time of Crisis: Standing for the Truth in a Changing World* (Matthias Media, Sydney: 2017) for a clear explanation of why differences about the issue of sexuality have had such significant effects.

Response to the questions referred by the Primate

A. Whether the regulation *Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019* made by the Synod of the Diocese of Wangaratta is consistent with the Fundamental Declarations and Ruling Principles in the Constitution of the Anglican Church of Australia.

The Wangaratta regulation is **not** consistent with the Fundamental Declarations and Ruling Principles in the Constitution, for the following reasons, elaborated further below:

- It is contrary to Scripture and therefore not consistent with the Fundamental Declarations and Ruling Principles
 - It is contrary to the Church's doctrine of marriage
 - It is contrary to the BCP
 - It is contrary to the Anglican doctrine of the authority of Scripture
2. The Wangaratta regulation, which allows for the blessing of same-sex couples who have entered into a civil marriage, is contrary to Scripture, and therefore not consistent with Clause 2 of our Fundamental Declarations, which states that "This 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". These scriptures teach us that same-sex sexual practice is not in accordance with God's word and therefore cannot be blessed.

The Bible's teaching about same-sex sexual relationships

2.1 The Bible teaches that marriage is between a man and a woman, and that the only appropriate context for sexual activity is within marriage (e.g. Genesis 2:24; Exodus 20:14; Matthew 19:4-6; Romans 7:2-3). The doctrine that marriage is between a man and a woman has been the "Christian Faith as professed by the Church of Christ from primitive times" (Clause 1, Constitution).

2.2 God is the Creator of the world, the one to whom every person is accountable, and who has the

right to make laws and commands, and to punish those who disobey, ignore or defy him. He cares about sin. Fundamental to sin is the rejection of God – a failure to honour him, to listen to his word, or to obey his commandments. For example, Jesus says, “If you love me, keep my commands” (John 14:15). *Whoever believes in the Son has eternal life, but whoever rejects the Son will not see life, for God’s wrath remains on them. (John 3:18, 36).*

2.3 Sexual immorality is clearly identified in Scripture as sinful; and the Bible regards wilful persistence in sexual (and other sin) as so grave as to jeopardise one’s salvation.

It is God’s will that you should be sanctified: that you should avoid sexual immorality ... The Lord will punish all those who commit such sins, as we told you and warned you before. ⁷ For God did not call us to be impure, but to live a holy life. ⁸ Therefore, anyone who rejects this instruction does not reject a human being but God, the very God who gives you his Holy Spirit. (1 Thess. 4:3-8)

For of this you can be sure: No immoral, impure or greedy person—such a person is an idolater—has any inheritance in the kingdom of Christ and of God. ⁶ Let no one deceive you with empty words, for because of such things God’s wrath comes on those who are disobedient. (Ephesians 5:5-6)

Put to death, therefore, whatever belongs to your earthly nature: sexual immorality, impurity, lust, evil desires and greed, which is idolatry. ⁶ Because of these, the wrath of God is coming. (Colossians 3:5-6)

Flee from sexual immorality. (1 Corinthians 6:18)

Those who are victorious will inherit all this, and I will be their God and they will be my children. ⁸ But the cowardly, the unbelieving, the vile, the murderers, the sexually immoral, those who practice magic arts, the idolaters and all liars—they will be consigned to the fiery lake of burning sulphur. This is the second death. (Rev. 21:7-8)

2.4 Any sexual activity outside of marriage is regarded by the Bible as sexual immorality, something to be avoided by God’s holy people: *Marriage should be honoured by all, and the marriage bed kept pure, for God will judge the adulterer and all the sexually immoral (Hebrews 13:4).* This includes sexual activity before marriage, adultery, homosexuality, bestiality, prostitution and cultic sexual practices.

2.5 Same-sex sexual activity is explicitly prohibited in several passages, including Leviticus 18:22; Romans 1:26-27; 1 Corinthians 6:9-10.² As the contributors to the Doctrine Commission book acknowledge (e.g. Matthew Anstey on page 69-70; cf. Dorothy Lee on page 138), the Bible doesn't say anything at all positive about homosexual sexual relationships. Both the OT and NT are clear and unequivocal about this.

2.6 We cannot bless what God has called sin. To bless an activity is to endorse and accept it; to say that it merits God's approval; that it is good and holy. By blessing same-sex marriages (or any other forbidden sexual activity), people are calling good what God calls sinful (see Isaiah 5:20; Malachi 2:17). There are some things that God blesses, and others that merit his terrible curse (e.g. Leviticus 24; Deuteronomy 27:11-26; Psalm 37:22). We must be very careful to be acting in accordance with God's will before we pronounce either blessing (declaring that an action or doctrine is pleasing to God) or curse (declaring that an action or doctrine is not pleasing to God).

Scripture is the primary source of the Church's doctrine

2.7 The Church's doctrine is derived from the Book of Common Prayer (BCP), the 39 Articles and the Creeds, but primarily from Holy Scripture, which underpins all other teaching of the Church. As Clause 2 of our Constitution says, "This 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".

2.8 While the Fundamental Declarations and the 39 Articles are vitally important, they do not and cannot elaborate every important point of doctrine, but instead point us to the authority of Scripture. The 39 Articles do not address the question of same-sex marriage, not because leaders and theologians of the time thought it best to leave this an open question, or regarded this as merely a matter of conscience, or because it was under dispute and they wished to avoid controversy, but because there was no question at the time that homosexual sexual practice could ever be endorsed by the Church. If the writers of the 39 Articles had been asked to include an Article addressing the current question before this Tribunal, we can say with

² For further detailed argument, see Robert A.J. Gagnon, *The Bible and Homosexual Practice: Texts and Hermeneutics*. Abingdon Press: Nashville, TN, 2001. For a brief popular treatment of the topic of homosexuality from a Christian point of view, see Sam Allberry, *Is God Anti-Gay?* (The Good Book Company: 2016).

confidence that they would have upheld the teaching of the Bible and the historical teaching of the church from primitive times that the only form of marriage allowed by God is between a man and a woman.

3. Secondly, the Wangaratta regulation is not consistent with Clause 3 of the Fundamental Declarations and Ruling Principles: “This Church will ever obey the commands of Christ, teach His doctrine, ... follow and uphold His discipline ...” The doctrine of the Church includes its teaching about marriage, and the decision of the Wangaratta synod is counter to the doctrine of the church regarding marriage.

3.1 The decision of the Wangaratta synod is counter to the commands of Christ (outlined above), including Matthew 19:1-12. The Anglican Church is committed to teaching Christ’s doctrine.

3.2 It is clear from General Synod and Standing Committee of General Synod motions that the church’s teaching on marriage is regarded as doctrine:

3.3 In the General Synod resolution of 2017 regarding “Marriage, Same-Sex Marriage and the Blessing of Same-Sex Relationships” (seconded by the Rev’d Canon Professor Dorothy Lee), the General Synod:

3.3.1 “recognises that **the doctrine of our church**, in line with traditional Christian teaching, is that marriage is an exclusive and lifelong union of a man and a woman”

3.3.2 asked the Doctrine Commission to “facilitate a respectful conversation in our church ... that explores Scriptural and theological issues relating to: (a) **The doctrine of marriage** expressed in the formularies of the Anglican Church of Australia”; (b) “exploring the relationship between the State’s definition of marriage and **the church’s doctrine of marriage**”

3.4 In that same year (2017), the General Synod, in response to the decision of the Scottish Episcopal Church to change the definition of marriage, “notes with regret that this step is contrary to **the doctrine of our Church** and the teaching of Christ” and “prays that the Scottish Episcopal Church will return to **the doctrine of Christ** in this matter”.

3.5 In its meeting of 9-10 November 2018, the Standing Committee of General Synod moved a motion in response to the decision of the Anglican Church in Aotearoa, New Zealand and Polynesia to authorise clergy to bless same-sex unions. The motion read, in part: *“The Standing Committee ... noted that this step [to bless same-sex unions] is contrary to Resolution I.10 of the 1998 Lambeth Conference and is **not in accordance with the teaching of Christ** in Matthew 19:1-12”*.

3.6 It is also clear from the Doctrine Commission book, *Marriage, Same-Sex Marriage and the Anglican Church of Australia: Essays from the Doctrine Commission* that marriage is regarded as part of the doctrine of our church:

3.6.1 Matthew Anstey argues that **“the BCP doctrine of marriage** should be taken as pertaining only to ‘the BCP **doctrine** of heterosexual marriage’” (page 50)

3.6.2 Matthew Anstey again: “we seek to interrogate the role Scripture plays in the discernment of the Anglican Church of Australia in its decision regarding **the doctrine of same-sex marriage**” (pages 59-60).

3.6.3 Stephen Pickard says “the confession of Christ as Saviour and Lord is not of the same order as belief in the church or, in the present context, **the doctrine of marriage**” (page 243)

3.7 Bishop John Parkes himself has stated that marriage is part of the doctrine of the Church:

In Bp John Parkes’ open letter (dated 15th August 2019) in response to the letter from New Cranmer Society of Melbourne, he states: *“What we will put to the Wangaratta Synod has nothing to do with **the doctrine of marriage** ... [M]arriage in the church ... is between a man and a woman This is **the doctrine of holy matrimony** which I uphold. I accept that the marriage of two persons of the same sex cannot take place within the Anglican Church of Australia”*.

3.8 Finally, this view of marriage as doctrine is held across the Anglican Communion. (The following quotes are from Michael Stead’s essay in the Doctrine Commission book.)

- *“At their meeting in Canterbury in 2016, the Primates of the Anglican Communion described TEC’s change in their marriage canon as ‘a fundamental departure from the faith and teaching held by the majority of our Provinces on **the doctrine of marriage**’” (page 16).*
- In Canada, the Primate’s Theological Commission advised in 2005 *“that **blessing of same-sex relationships was a matter of doctrine**” (page 17) and needed to be considered “in relation to **the doctrine of marriage**” (page 17).*
- The Anglican Church of Aotearoa, New Zealand and Polynesia has not altered their Church’s doctrine of marriage (page 23).
- In England in 2014, the House of Bishops affirmed *“The Church’s **doctrine of marriage** is (only) between a man and a woman. The changes of the State’s definition of marriage does not change the Church’s doctrine of marriage” (page 27).*

The significance of the church’s doctrine of marriage

3.9 Marriage is a critical aspect of the Bible’s doctrine. Marriage is used throughout the Bible as a metaphor for God’s relationship with his people: see, for example, Isaiah 54:4-8; Jeremiah 3:1, 8, 20; Hosea 1-3; Mark 2:19-20; Revelation 19:6-9 and (most clearly) Ephesians 5:22-33. The significance and pervasiveness of the metaphor of marriage is seen by the way adultery is repeatedly used as a metaphor for idolatry.

3.10 Marriage is a creation ordinance. God’s design for marriage applies to all people, in every culture and time. There is no distinction in God’s eyes between Christian marriage and secular marriage: that is, there is not one form of God-approved marriage for Christians and another form for unbelievers. The Bible does not differentiate between a civil marriage and a church marriage, only between marriage in the eyes of God (which can be marriage only between a man and a woman) and other sexual relationships which are not lawful in God’s eyes (even if authorised by the state). The existence of the *Blessing of Civil Marriage* ordinance in the first place is recognition that a marriage doesn’t have to take place in a church, under Christian rites, in order to be acknowledged as a marriage in the eyes of God.

3.11 The Church cannot, therefore, authorise or bless or condone any form of sexual

relationship (whether called “marriage” or not) that is not marriage as defined by God in his Word (contra. the Wangaratta submission, Clause 6.2).

3.12 The consistent teaching of the Anglican Church of Australia is that marriage is the only appropriate context for sexual expression

3.12.1 As the Wangaratta submission notes (para. 53), “The Church’s teaching on marriage ... can also be found in codes of conduct such as *Faithfulness in Service* ...” *Faithfulness in Service* states that clergy and church workers must maintain “chastity in singleness and faithfulness in marriage” (*Faithfulness in Service*, 7.2). The “Standards for clergy and church workers” state, “You are to be chaste and not engage in sex outside of marriage and not engage in disgraceful conduct of a sexual nature” (7.4). The Anglican Church does not allow for sexual activity in any context other than marriage between a man and woman.

3.12.2 The Wangaratta submission draws too artificial a distinction between “doctrine” and “teaching” (practical instruction about how to live). As *Faithfulness in Service* demonstrates, it is not just what one believes but how one lives that matters. “The personal behaviour and practices of pastoral ministry required of clergy (bishops, priests and deacons) of the Anglican Church of Australia are specified in the Holy Scriptures as well as in its Constitution, canons, ordinances, the Book of Common Prayer and the Ordinal.” (FIS, page 5). If the doctrine we believe does not affect how we live, then it is fair to question whether we really believe it. It matters very much to God not just what we believe but how we behave. The Bible has, for example, clear warnings about the dangers of persisting in wilful sinful behaviour (e.g. 1 Thess. 4:1-8; Hebrews 6:4-8; Jeremiah 6:10, 15, 19; 7:8-15, 23-29).

The Wangaratta resolution is not consistent with the doctrine and principles of the BCP

4. Thirdly, the Wangaratta regulation is **not** consistent with the Fundamental Declarations and Ruling Principles in the Constitution because it is contrary to the BCP. As Clause 4 states, “This Church ... retains and approves the doctrine and principles of the Church of England embodied in the Book of Common Prayer [BCP] ...”

- 4.1 The BCP clearly upholds the principle that marriage is between a man and a woman and that “no other” form is in accordance with the teaching of Christ. The principles embodied in the BCP do not regulate only heterosexual relationships, but **all** sexual relationships. Thus when the BCP says that unlawful relationships are not joined together by God, this includes any same-sex sexual relationships.
- 4.2 The doctrine and principles embodied in the BCP are derived from Scripture, not from the cultural context of the time (contra Para. 59 of the Wangaratta submission).
- 4.3 While Clause 4 allows the Church to make changes, this is only “provided all such statements, forms, rules or alteration or revision thereof are consistent with the Fundamental Declarations contained herein” and “that the above-named Book of Common Prayer ... be regarded as the authorised standard of worship and doctrine in this Church, and no alteration in or permitted variations from the services or Articles contained therein shall contravene any principle of doctrine or worship laid down in such standard”.

The Wangaratta regulations threaten our Anglican doctrine of the authority of Scripture

5. Fourthly, the Wangaratta regulations are not consistent with the Fundamental Declarations and Ruling Principles of the Constitution because they are not consistent with the Anglican doctrine of the authority of Scripture.

5.1 The Anglican doctrine of Scripture is that it is God’s authoritative word

- 5.2 This doctrine is derived from the Bible itself, which teaches us that Scripture is God’s authoritative word, breathed out by God, to which we must pay attention, and which we ignore at our peril (e.g. 2 Timothy 3:16-17; 1 Thess. 2:13; 2 Peter 1:19-21; Hebrews 4:12).

- 5.3 This doctrine of Scripture is affirmed in the BCP, for example, in the Collect for the Second Sunday in Advent: *Blessed Lord, who hast caused all holy Scriptures to be written for our learning: Grant that we may in such wise hear them, read, mark, learn and inwardly digest them, that by patience and comfort of thy Holy Word, we may embrace and ever hold fast the blessed hope of everlasting life, which thou hast given us in our Saviour Jesus Christ.*

- 5.4 This doctrine of Scripture is affirmed in the 39 Articles, which repeatedly uphold the authority of Holy Scripture: in Article VI; in Article XVII, which says, “we must receive God’s promises in

*such wise, as they be generally set forth to us in Holy Scripture: and, in our doings, that Will of God is to be followed, which we have expressly declared unto us in the Word of God”; and in Article XX, which says, “it is not lawful for the Church to ordain any thing that is contrary to God’s Word written, neither may it so expound one place of Scripture, that it be repugnant to another”.*³

5.5 This doctrine of Scripture is affirmed in our Foundational Declarations: *“This 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”* (Clause 2).

The doctrine of Scripture is undermined by the Wangaratta regulation

5.6 The Wangaratta Regulations present us with a choice about whether we will uphold and submit to the Bible as God’s authoritative word to us, or whether we will reject it in favour of experience, reason and culture.

5.7 Same-sex marriage is a controversial and emotional issue. It is not just a social issue, but a profoundly theological issue; not a matter of conscience, but a matter of church discipline. What is at stake in this issue is the identity and integrity of our church.

5.8 The Wangaratta submission undermines the perspicuity and authority of Scripture. For example, in Para. 65, it is argued that “it is not always possible to discern from scriptural texts a single unified and consistent meaning”; that “ancient texts ... are the subject of ...widely divergent interpretation and explanation ...” (Para. 65.1); that “questions of marriage and personal relationships ...are matters about which faithful Anglican people of good conscience can differ” (Para. 66).

5.9 But if Scripture is not able to be understood, we cannot know what it means to obey it. When a diversity of views are accepted on significant issues of doctrine, then obedience and holiness become optional and church discipline becomes toothless. When it is argued that the Bible is so unclear that it is open to completely contradictory interpretations, then confidence in the Bible as the Word of God – reliable, trustworthy and authoritative – is undermined. Thus Scripture loses its relevance and authority as a guide to our lives and as our ultimate authority

³ Similarly, Article XXI states that “things ordained by [General Councils] as necessary to salvation have neither strength nor authority, unless it may be declared that they be taken out of Holy Scripture”; Article XXXIV states that “nothing be ordained against God’s Word”, distinguishing between “man’s authority” and the authority of the Bible.

in faith and practice.

- 5.10 As we have seen from the essays in favour of same-sex marriage in the Doctrine Commission book, and from Bishop John Parkes himself, “lived experience” has become a more important guide than God’s word to what is right. This is in contravention of our Fundamental Declarations. For example, in Bishop John Parkes’ Presidential Address to Wangaratta Synod on 30th August 2019, he emphasises experience as key to theology. While he acknowledges “the danger of subjectivism in this approach”, he talks positively about “theology from below – starting with the human experience of the holy and seeking a framework within which to articulate and make sense of that experience”. Further undermining the authority of the Bible, he introduces a false dichotomy between Jesus and the Bible, arguing that “[w]e are Christocentric and not bibliocentric”. He challenges both “the infallibility of the Bible” and its inspiration:

“Scripture is one way, an important way but not the only way by which the community of faith keeps access to the primordial revelation on which it is founded. Scripture does not automatically lay this primordial revelation before us but *when read in conjunction with the present experience* of the community of faith, the scriptures come alive ... This is what we mean by the inspiration of scripture. *‘Such inspiration does not lie in the words* (it is not ‘verbal inspiration’), but belongs to the scriptures only as they are set in the context of the whole life of faith in the community” [italics mine].

- 5.11 In response to this challenge to the authority of Scripture, the Tribunal must uphold the authority and relevance of the canonical Scriptures. It becomes meaningless to say that as a church we submit to the authority of Scripture if the Scriptures are seen as so unclear that they cannot guide our Church in any formulation of doctrine. It is impossible to keep our promise to obey the Scriptures if we cannot tell whether an action is obedient or disobedient. In order to honour Christ and his words, we need to trust that God is able to reveal himself; that the Bible makes sense; that it can be understood, and therefore obeyed (or disobeyed).

- 5.11.1 Our society’s view of marriage has changed profoundly; but that does not mean that God’s view has. Francis Schaeffer’s warning is worth repeating here. He writes:

[T]he Christian must resist the spirit of the world in the form it takes in his own

generation. ... It is our generation of Christians more than any other who need to heed these words attributed to Martin Luther: "If I profess with the loudest voice and clearest exposition every portion of the truth of God except precisely that little point which the world and the devil are at that moment attacking, I am not confessing Christ, however boldly I may be professing Christ. Where the battle rages, there the loyalty of the soldier is proved, and to be steady on all the battlefield besides, is mere flight and disgrace if he flinches at that point".⁴

B. Whether the regulation is validly made pursuant to the **Canon Concerning Services 1992**.

The Wangaratta regulation is **not** validly made pursuant to Canon Concerning Services 1992, for the following reasons:

6. Section 5(1) of the Canon states that variation to forms of service are permitted "which are not of substantial importance". However, the variation introduced by Wangaratta Synod is of substantial importance, as it is counter to the doctrine and practice of our church, and has huge pastoral impact.
7. Section 5(3) states that "All variations in forms of service and all forms of service used must be reverent and edifying and must not be contrary to or a departure from the doctrine of this Church". The Wangaratta regulation is contrary to the doctrine of this church, as shown above.
8. The Wangaratta regulation is a departure from General Synod resolution 62/04, which states that "this General Synod does not condone the liturgical blessing of SSRs".
9. The form of service in Appendix A of the Wangaratta regulation ("A Service of Blessing for persons who have been married according to the Marriage Act 1961") is contrary to the trial liturgy, "The Blessing of a Civil Marriage", authorised by General Synod, in the following key ways:
 - 9.1 The Wangaratta form of service omits any mention of gender or the possibility of children. In contrast, the trial liturgy refers to the **procreative function of marriage**: "Through marriage a new family is formed where children may be born" (para. 4); and Paragraph 13b includes a prayer that "**husband and wife** may ... share with you the joy of creating new life". This presumes a marriage between a man and a woman; a union between two men or two women

⁴ Quoted in Francis Schaeffer, *The God Who Is There*, IVP: Leicester, UK, 1990, page 11 (emphasis mine).

cannot result in children without the introduction of a third party to the marriage.

9.2 The authorised trial liturgy, “The Blessing of a Civil Marriage”, is explicitly about the blessing of a civil marriage between a man and a woman:

9.2.1 In paragraph 2, the minister says, “Marriage is a gift of God our creator. It is a symbol of God’s unending love for his people, and of the union between Christ and his Church.” This symbolism is based on the difference between men and women; it is a union of one with another, not of two of the same (cf. Ephesians 5:22-33).

9.2.2 Also in paragraph 2, the minister says, “Scripture teaches that marriage is a lifelong partnership uniting **a woman and a man** in heart, mind and body.” It is very clear from this that any marriage to be blessed according to this rite is a marriage between a man and a woman. (In the next line, the minister refers to “**husband and wife**”.)

9.2.3 The “Affirmations” in paragraphs 7a-8 reference “**husband**” and “**wife**”, again making clear that this is a rite for marriage between a man and a woman:

9.2.3..1 “The minister asks the husband: ‘N, you have taken N as your wife’” (para. 7a) ; “The minister asks the wife: ‘N, you have taken N as your husband’” (para. 7b)

9.2.3..2 Alternatively, “The minister addresses the couple, ‘N and N, you have taken each other as husband and wife’” (para. 8), with questions then asked “to the husband” and “to the wife”

9.2.4 In Paragraph 12, one of the prayers asks God to “Pour out the abundance of your blessing on **this man and this woman**”.

In conclusion:

10. In response to the question whether the regulation ***Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019*** made by the Synod of the Diocese of Wangaratta is consistent with the Fundamental Declarations and Ruling Principles in the Constitution of the Anglican Church of Australia, the answer is **No**.

11. In response to the question whether the regulation is validly made pursuant to the ***Canon Concerning Services 1992***, the answer is **No**.

IN THE APPELLATE TRIBUNAL

ANGLICAN CHURCH OF AUSTRALIA

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

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

Submission from Reverend Wayne Walters, Vicar of Christ Church Dingley

Introduction

This submission addresses some of the assertions made by the Primary Submissions of the Synod of the Diocese of Wangaratta under the headings of:

Blessing; Scripture and Doctrine

Summary of these submissions

1. That the Scriptural concept of Blessing is inextricably linked to the expectation and condition of obedience to God's commands. That which is prohibited by Scripture cannot be blessed without spiritual danger to those being blessed and the one doing the blessing.
2. That Scripture speaks plainly on this matter in contrast to the attempt of the Submission to claim otherwise.
3. That Doctrine cannot be separated from matters of Christian behaviour, given that in the matter of same sex activity, as in other areas of sin where persisted in – there are eternal implications for the salvation of the persons involved.

Blessing

Blessing in Scripture is prophetic – as in Jacob and Moses blessing the sons and tribes concerning their future; and impartational – conferring on them certain entitlements – as Jacob received from Isaac. It is also consequential – that which is promised to those who obey God's laws as distinct from those who disobey, who consequently come under a curse. Deuteronomy chps 27-30. One is life, one is death. The Aaronic blessing in Numbers is given as a set of words whose priestly use God promised to honour.

What is clear is that the act of blessing confers God's favour and the expectation of blessing is inextricably tied to obedience to God's commands. It is inconceivable and inconsistent with the biblical concept of blessing that blessing could be conferred on persons in the very context of committing sin. Dorothy Lee speaks of Jesus' blessing at the consummation of human history as for

all creation, having stated that is 'drawing into the centre those pushed to the outside'. She neglects to consider the scripture in Revelation 22 that those who are called blessed are those who have 'washed their robes' while the sexually immoral are among those excluded, who are 'outside the gates'. So a distinction is made in Scripture, not just here but throughout, of those who might be called blessed and those who are outside of God's specific blessing, on the basis of their choice to continue to live contrary to his law. This is a state that can change at any time through repentance and faith, through the grace of Jesus.

Paul also warns Timothy 1 Tim 5:22 to not be hasty to lay hands upon anyone and not to share in the sins of others. The context is the setting aside of people in leadership, or of imparting spiritual gifts, but the implications for blessing are clear, which is that we are not to affirm or imply approval of that which has the character of sin. This is to compromise the integrity of the gospel and to empty the blessing of its power. It becomes a ritual without substance and may even become a curse, when we consider the parallel of Paul's warning of those who receive communion in an unworthy manner that they are bringing 'judgment upon themselves'. (1 Cor 11:28-29)

Scripture

The above accepts the teaching of Article VII that '*...no Christian man [sic] whatsoever is free from the obedience of the commands which are called moral.*'

The Wangaratta submission is ingenuine in the slant it puts on the diversity of interpretation of Scripture. It concedes! that –'there is a body of opinion that would consider the blessing of same sex civil marriages contrary to Holy Scripture and therefore contrary to the faith of the Church...' Surely this is the understatement of the century!

It goes on to say that this is because 'certain biblical verses ... are interpreted by some scholars as prohibiting homosexual relationships.' '*Some scholars*' includes the weight of Christian tradition in history as well as current orthodoxy. The alternative view is the one that needs to establish how the consistent and clear teaching across the breadth of Scripture can be understood other than in its plain sense.

Much is made of 'different views' and 'disputed passages' and 'continuing debates among scholars', but in one sense that is simply what scholars do. Furthermore, Paul concedes that differences among the Corinthians may be necessary to show which of them have God's approval. (1 Cor 11:19) So it is no evidence that the Scripture is ambiguous - just that there are those who would like it to be.

The comparison with changed rulings on ordination of women due to different socio-cultural context is not applicable. There are scriptural precedents for women in roles of spiritual leadership in both Old and New Testaments as well as the teaching that in Christ there is no male or female. The same can be said of the parallels drawn by Dorothy Lee in relation to re-marriage of divorced persons or slavery – both issues which have biblical precedent and direct treatment that opens the door for a reconsideration of past acceptance or rejection by the church. Homosexual practice has no such balancing scripture to cast doubt upon its consistent prohibition in both Old and New Testaments. Speculations and suggestions about words and meanings do not alter the plain sense of what is actually spelt out in Romans 1:26-32 and explicit in the Old Testament (Lev 18:22, 20:13).

It may further be said that suggestions that changed times and culture require revision of scriptural prohibitions need to take into account the strong theme through the Scriptures not to learn the 'ways of the nations', nor to allow the world to 'squeeze you into its mould'. *'Friendship with the world is enmity with God'* James 4:4

The point of these verses and theme is that the spirit of the world is not to be identified as the Holy Spirit -quite the contrary, and the way we discern God's Spirit from that of the world is by Scripture and also by the fruit it produces.

Doctrine

Teaching about the faith includes that which is necessary for salvation. Similarly, those things that are taught as excluding one from salvation surely can be described as an aspect of doctrine. 1 Cor 6:9-10, Roms 1:26-32, Jude 7 are just a selection of texts characteristic of the warning of the eternal implications of persisting in homosexual acts.

It is not so easy to separate behaviour and discipline from doctrine. In 2Timothy 4:2-3 Paul exhorts Timothy to *'Preach the Word: ...correct, rebuke and encourage with great patience and careful instruction. For the time will come when people will not put up with **sound doctrine**. Instead, to suit their own desires, they will gather around them a great number of teachers to say what their itching ears want to hear.'*

The teaching of the faith includes the right practice of the faith. It is purely academic to split the two.

And right practice is established from the consistent counsel of the Scriptures and from the inherited and tested tradition of the Church as to their interpretation.

Conclusion

I contend that the decision of the synod of the Diocese of Wangaratta to provide a form of blessing for civil marriages, which consequently includes same sex marriages, contravenes the doctrine and teaching of the Anglican Church.

This doctrine is steeped in the Scriptures.

Its teaching on blessing presumes and requires a posture of obedience to God's commands which same sex activity is in contradiction of.

I therefore call upon the Appellate Tribunal to answer No to Question 2

**IN THE APPELLATE TRIBUNAL
ANGLICAN CHURCH OF AUSTRALIA**

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

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

SUBMISSIONS BY GAFCON AUSTRALIA

Introduction

1. These are the submissions of Gafcon Australia Limited ABN 604 064 315 (**Gafcon**) with regard to the questions posed by the Primate regarding the *Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019* (**Regulation**) in the reference made on 5 September 2019.
2. Gafcon reserves the right to add to these submissions following receipt of submissions from other interested parties, including at any oral hearing set down by the Tribunal.
3. Gafcon's interest and concern in this reference, as a representative of over 350 members of the Anglican Church of Australia (**Church**) from all of the twenty-three Australian dioceses, is the question of unity in the Church, relationships with Anglican Churches and Dioceses both in Australia and overseas, and the potential disenfranchisement and exclusion of faithful Anglicans if the Regulation is considered to be validly made. Disenfranchisement and exclusion has been the experience in many overseas cases where actions similar in nature to the Regulations have been adopted.

Summary of these submissions

4. Question 1 raises a matter relating to the Doctrine of the Church in the Constitution. We submit that if the Tribunal is not unanimous as to the doctrine of the Church in regard to marriage, then this question of doctrine should be referred to the House of Bishops and the board of assessors for advice, under Section 58 of the Constitution.
5. In the matter of question 1, we submit that the regulation *Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019* made by the Synod of the Diocese of Wangaratta is not consistent with the Fundamental Declarations and Ruling Principles in the Constitution of the Anglican Church

of Australia, in that it assumes a doctrine of marriage that cannot be sustained by any of the ruling principles, and is inconsistent with the doctrine of marriage set out in the Book of Common Prayer and thereby is inconsistent with the Ruling Principles. We urge the Appellate Tribunal to answer “no”.

6. Question 2 raises two distinct but related questions.
 - 6.1. Does the Canon Concerning Services provided a source of legislative power for the making of the Regulations? If the Canon provides a source of power, it is qualified in all cases by the requirement that such Regulations as to services “must not be contrary to or a departure from the doctrine of this Church” [*Canon Concerning Services 1992, Clause 5(3)*]. We submit that the regulation is contrary to the Fundamental Declarations (see paragraphs 14-19 below) and is therefore contrary to the doctrine of this church, and therefore, the answer to the question number 2, is “no”.
 - 6.2. Can the form of blessing specified for use by the Regulations be said to be consistent with the discretion given to ministers and the Bishop by section 5 of the *Canon Concerning Services*, and more specifically, whether the form of blessing is “reverent, edifying, and not contrary to doctrine”? If the doctrine of the Church in regard to marriage is that marriage is between a man and a woman to the exclusion of all others for life, then Question 2 clearly must be answered “no”.

“Blessing” - A threshold Question

7. In Anglican liturgy a blessing is more than just a thanksgiving or a prayer for goodwill. It endorses God’s good purpose for a forgiven individual or congregation. This high view of blessing is demonstrated by the fact that only a Priest/Presbyter can offer a blessing.
8. A blessing approves, endorses and sanctifies in the name of the Triune God. It follows that anything that is blessed must be approved, endorsed and sanctified by God in His Word. In the scriptures, “blessing” is counterposed with “cursing” where the nature of curses are declarations against what God does not approve, endorse or sanctify. For example, see Deuteronomy 28.
9. It therefore follows that the only appropriate subject for Anglican liturgical blessing are those behaviours which God approves, endorses or sanctifies. In Constitutional terms, that means those behaviours that are consistent with the Fundamental Declarations.

Is the Regulation about Marriage or not?

10. One way for the Tribunal to avoid having to answer the questions in the reference is to conclude that the Regulation and the proposed liturgy in Appendix A to the Regulations have nothing to do with marriage as understood by the Church and that they are about something different (e.g. love, companionship or friendship) which are outside the Church's understanding of marriage, and therefore can stand alongside the Church's accepted doctrine of marriage.
11. It is submitted that this avoidance approach is not available because the liturgy proposed in Appendix A to the Regulation, on its own terms, makes the proposed liturgy about marriage.
12. The title of the Regulation is: "A Service of Blessing for persons who have been *married* according to the Marriage Act 1961", and the service contains the words "We have come together to ask God's blessing on *N* and *N* as they continue their *married* life together" and "As you have entered into a civil *marriage* and now seek God's blessing ..." (emphasis added). These words make it clear that the Service of Blessing is for the blessing of a marriage, not some other form of relationship.
13. It is not in dispute that marriage according to the Anglican Church is only between a man and a woman. This is accepted even by Bp Parkes himself, in his open letter to the New Cranmer Society of 15 August 2019, in which he writes: *The resolutions of the 2004 General Synod make it clear that marriage in the church – Christian marriage, if you will - is between a man and a woman, voluntarily entered into to the exclusion of all others for life. This is the doctrine of holy matrimony which I uphold. I accept that the marriage of two persons of the same sex cannot take place within the Anglican Church of Australia.*¹

Doctrine or merely Faith Ritual Ceremonial

14. Whether the Regulation deals with "doctrine" or "faith, ritual and ceremonial", is the gravamen of the reference and of these our submissions. Traditionally and historically, Anglicans have understood marriage to be a doctrine emerging from the scriptures and the teaching of Christ. This is clear in reading Matthew 19:1-12 and Mark 10:1-12, alongside Lambeth Resolution I.10 1998, General Synod Resolutions 62.04, 156.10, R51/17, R48/17 and General Synod Standing Committee resolution 5.1B of November 2018, which all present marriage as a doctrine. Any liturgy which purports to vary or to act

¹ Rt Rev A John Parkes AM open letter to New Cranmer Society dated 15 August 2019.

inconsistently with that doctrine or assumes a different doctrine of marriage must be invalid.

15. The Fundamental Declarations in Chapter 1 of the Constitution are crucial to the consideration of this question.
16. “The Christian Faith as professed by the church of Christ from primitive times” (Section 1) refers to the ancient faith of the church. This ancient faith is not confined to the Creeds, which are a particularization of the ancient Christian faith but are not exhaustive, as is clear from the qualifying words in the Constitution, “and *in particular* as set forth”. The ancient faith of the church universal has expressed a doctrine of marriage since those primitive times both in word and by action. That ancient doctrine of marriage is that marriage is an exclusive life-long relationship between a man and a woman. To vary the definition of marriage as proposed in the Regulation would put the Church outside of, and at odds with, the One Holy Catholic Apostolic Church of Christ, and at odds with the majority of other Anglicans and other churches worldwide.
17. Section 2 of the Constitution indicates that any understanding of “marriage” that is blessed by the church must be in accordance with the canonical scriptures of the Old and New Testaments, which are “the ultimate rule and standard of faith” for our church. The scriptures of the Old and New Testament provide no other rule or standard for marriage other than a life-long commitment between a man and a woman. The sustaining of a definition of marriage between persons of the same sex, or any support of same-sex sexual activity, can only be achieved if significant passages of scriptures are deemed not to apply today. These include texts which describe same-sex sexual activity as sin, including: Genesis 19, Judges 19; Leviticus 18:22 and 20:13; Romans 1:26-27; 1 Corinthians 6:9-10; and 1 Timothy 1:8-11. Such a definition also requires the setting aside of scriptures that teach marriage is only between a man and a woman, not least of which are Jesus’ own words in Matthew 19:1-12 and Mark 10:1-12, which appeal, not to any cultural norms, but to creation. There is no passage of scripture which supports a definition of marriage as being between two persons of the same sex, or which supports same-sex sexual activity, in any context. We therefore submit that a regulation to bless marriages, including same-sex marriages, under the Marriage Act is contrary to the Fundamental Declarations of our Church.
18. Section 3 of the Constitution commits our church to “obey the commands of Christ.” Our General Synod in Resolution R51/17 has already affirmed “the doctrine of our Church and the teaching of Christ that, in marriage, “a man will leave his father and mother and be united to his wife, and the two will become

one flesh" (Matt 19:6)" (emphasis added). This position was reiterated by the General Synod Standing Committee in Resolution 5.1B, in November 2018. We submit that the blessing of any marriage not in accordance with this command of Christ, which has been repeatedly affirmed by our church, is therefore contrary to the Fundamental Declarations of our Church.

19. At stake in this reference is whether or not the canonical Scriptures have or retain any authority or relevance to doctrine of the Church other than perhaps as advisory or indicative. The Tribunal must uphold the authority and relevance of the canonical Scriptures. Scripture becomes essentially irrelevant if it is determined that the Scriptures are so confusing and unclear as to be open to contradictory interpretations on an issue as substantial as this one. It becomes meaningless to say that as a church we submit to the authority of Scripture if the Scriptures lack the clarity to guide our Church in the formulation of doctrine.
20. The consideration of the questions posed in paragraphs 12 to 18 above raises a "point of doctrine". In those circumstances, if the Tribunal is not unanimous upon the point of doctrine, the opinion of the House of Bishops and the board of assessors should be obtained. (Section 58(1) of the Constitution).

Faith Ritual Ceremonial and Discipline

21. The first Ruling Principle in Section 4 of our Constitution retains and approves the doctrine and principles of the Church of England as expressed in the Book of Common Prayer (BCP) for our Church. This expresses the principle of *lex orandi, lex credendi* that "the rule of prayer is the rule of belief", i.e. as Anglicans "we believe what we pray". Prayer is not merely devotional, but also declarative and educative. The BCP clearly defines marriage and its purposes in the preamble to the marriage service². We submit that a regulation to allow

² DEARLY beloved, 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 of God in the time of man's innocency, signifying unto us the mystical union that is betwixt Christ and his Church; which holy estate Christ adorned and beautified with his presence, and first miracle that he wrought, in Cana of Galilee; and is commended of Saint Paul to be honourable among all men: and therefore is not by any to be enterprised, nor taken in hand, unadvisedly, lightly, or wantonly, to satisfy men's carnal lusts and appetites, like brute beasts that have no understanding; but reverently, discreetly, advisedly, soberly, and in the fear of God; duly considering the causes for which Matrimony was ordained.

First, It was ordained for the procreation of children, to be brought up in the fear and nurture of the Lord, and to the praise of his holy Name.

Secondly, It was ordained for 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.

Thirdly, It was ordained for the mutual society, help, and comfort, that the one ought to have of the other, both in prosperity and adversity. Into which holy estate these two persons present come now to be joined. Therefore if any man can shew any just cause, why they may not lawfully be joined together, let him now speak, or else hereafter for ever hold his peace.

the blessing of a marriage which is inconsistent with the doctrine and principles expressed in the Book of Common Prayer contradicts this Ruling Principle.

Conclusion

22. The Tribunal should answer the questions as follows:

1. Whether the regulation **Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019** made by the Synod of the Diocese of Wangaratta is consistent with the Fundamental Declarations and Ruling Principles in the Constitution of the Anglican Church of Australia. **No.**
2. Whether the regulation is validly made pursuant to the Canon Concerning Services 1992. **No.**

St Stephen's Greythorn submission in reference to the Primate's referral to Appellate Tribunal

Our Interest

St Stephen's, Greythorn has a particular interest in the Reference to the Appellate Tribunal of "Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019" as:

- We are part of the Anglican Church of Australia
- We desire clarity about teaching members of the congregation and especially youth and young adults about biblical sexuality
- We seek clarity on this issue as there has been conflict in the parish over what the Bible teaches on same-sex marriage and whether any homosexual practice is allowable by God
- We desire to teach and uphold what is in accordance with our Anglican formularies and Foundational Documents as set out in Scripture, the Book of Common Prayer (BCP) and the 39 Articles.

Introduction

We will argue that marriage is a doctrine, it is only between a man and a woman, and as outlined in scripture is the normative pattern for marriage.

We will go on to argue that as a consequence of this, same sex relationships cannot be blessed because it means that we would be approving something that God condemns.

Doctrine of Marriage

The Wangaratta submission argues that marriage is not a doctrine of faith but an issue of ritual, ceremonial and discipline. We argue differently for the following reasons:

First, it seems that the Australian and wider Anglican Church refers to marriage as a doctrine. For example in the foreword of *'Essays from the Doctrine Commission,'* the Chair of the Doctrine Commission, Bishop Jonathan Holland states that the purpose of the *'Essays'* is to explore the theological and scriptural issues of the 'doctrine of marriage'.

And when one reads through the *'Essays'* we see authors drawing upon quotes and resolutions of meetings the term 'doctrine of marriage' is used (e.g. Primates meeting in Canterbury 2016, 2005 Primate's Theological Commission that produced the St Michael's Report, 2014 House of Bishops.)

Historically, this shows that the thinking about marriage in the Anglican Church is that it is a doctrine rather than as a ritual or ceremony. The Diocese of Wangaratta is suggesting something that goes against the historical thinking of the Anglican Church when they argue that marriage is not a doctrine.

Second, the Wangaratta submission argues that the teaching on marriage in the BCP is not doctrine but teaching on ritual, ceremonial and discipline.

We argue that marriage as presented in the BCP is more than ritual, ceremonial, worship and discipline because it invokes scripture to teach us what marriage is. This fits the definition of doctrine as outline by the constitution in Section 74(1) which is defined as "the teaching of this church on any questions of faith". The BCP outlines the nature and purpose of marriage in scripture.

The marriage services in the BCP serves two purposes. First it authorises a marriage service and second it reminds, reinforces and re-teaches what marriage is. The BCP reminds us of the Biblical principles or what the doctrine of marriage is. This is briefly summarised as;

1.

- It is a union between a man and woman
- For the procreation of children
- Appropriate expression of our sexual desires (i.e. avoid fornication)
- For help and comfort
- Lifelong voluntary and exclusive
- A sign of the relationship between Christ and the Church
- Grounded in creation
- Joined together and blessed by God

These are more than ritualistic or ceremonial practices. This is doctrine that is to be taught.

Our third argument is that the BCP shows us that these doctrinal principles of marriage are firmly grounded in scripture, and scripture forms the Fundamental Declarations of the Australian Anglican Church which our constitution states we must always be consistent with. The Wangaratta submission is inconsistent with what the Bible teaches about marriage and so is inconsistent with Fundamental Declarations.

Genesis 1 & 2 recounts God's creation of the world. It shows the order of relationships in creation between God, human beings and the created world, and declares it is good. In Gen 1 v 27 – 28 God creates male and female and commends them to be fruitful and multiply. In Gen 2 v 24 we find that a man shall leave his mother and father, shift his loyalty from them to his wife and the new family they will create. This is pattern of marriage that God has outlined. In Matt 19 some Pharisees come to test Jesus about reasons for divorce. Jesus draws upon both Genesis 1 v 27 and & Genesis 2 v 24 for his answer. In other words the Creator of the world is drawing upon his normative pattern for marriage to answer the Pharisees' question. Jesus' answer teaches us that marriage is serious business. Marriage is a life-long, sexually exclusive relationship between a man and a woman.

The Wangaratta submission is at odds with that Jesus teaches and is inconsistent with the Fundamental Documents of the Australian Anglican Church.

However, the Wangaratta submission observes that the Wangaratta Diocese can make forms for a particular occasion and in this case there is "no authorised form for the occasion of persons in a civil marriage who seek a blessing". But the "authorised form" must be consistent with Fundamental Documents.

So our last objection is that a blessing of a civil same-sex relationship is inconsistent with scripture particularly Romans 1 and 1 Corinthians 6 which clearly condemn same-sex intercourse.

Romans 1 explains that God gave men and woman over to shameful lusts. In v26 we read "Woman exchanged natural sexual relations for unnatural ones." And in v 27 "In the same way the men also abandoned natural relations with women and were inflamed with lust for one another. Men committed shameful acts with other men." This expression of sexuality (among other things) lent themselves to God's wrath, not blessing. It is outside God's normative pattern of marriage.

In 1 Cor 6 v 9 – 10 Paul gives a list of those who will not enter the kingdom of heaven. It includes the sexually immoral, idolaters, male prostitutes, practising homosexuals, thieves, the greedy, drunkards, slanderers or swindlers. Paul reminds the Corinthians that is what some of them were and we too need the humility to recognise ourselves on this list. These are people who are not blessed by God, but rather stand outside the kingdom. They stand condemned for doing wrong.

Consequently a blessing of a civil same sex marriage is inconsistent with the Fundamental Documents because scripture shows that what is being blessed is something that God condemns.

Conclusion

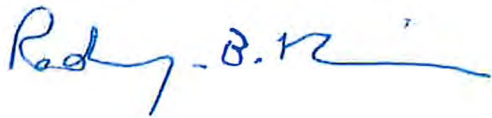
So in conclusion we reject the argument that is presented in Wangaratta's submission that marriage is not doctrine. It is clearly taught in scripture and affirmed by Jesus. This position is reinforced by the BCP and it is the historical position of the Anglican Church.

We argue that an authorised service for a blessing of a civil marriage cannot be used for blessing same sex marriages as same-sex intercourse is condemned in scripture. Scripture reveals that God does not bless these relationships but rather condemns them.

Consequently we believe a service that blesses same sex marriage is inconsistent with our Anglican formularies and Foundational Document, and request that no such service be permitted within the Anglican Church of Australia.

On behalf of the Parish Council of St Stephen's Greythorn

Reverend Rodney Morris, Senior Minister



12th December 2019

Dr Gus McLean, Church Warden



12th Dec 2019

Dr Dorothy Prentice, Church Warden



12/12/2019

13th December, 2019

Submission to the Appellate Tribunal, Anglican Church of Australia, by Lisette Malanina, regarding:

Primate's reference under section 63 of the Constitution: Blessing of Persons Married according to the Marriage Act 1961 Regulations 2019 (Diocese of Wangaratta)

And

Primate's reference under section 63 of the Constitution

At the request of 25 members of the General Synod:

Blessing of Persons Married according to the Marriage Act 1961 Regulations 2019 (Diocese of Wangaratta)

Response to first reference:

1. Whether the regulation Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019 made by the Synod of the Diocese of Wangaratta is consistent with the Fundamental Declarations and Ruling Principles in the Constitution of the Anglican Church of Australia.

Given that the regulation Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019 made by the Synod of the Diocese of Wangaratta allows for the blessing of same-sex couples married pursuant to the act, the regulation does not follow the doctrine of the Anglican Church as consistent with the Fundamental Declarations and Ruling Principles in the Constitution of the Anglican Church of Australia.

Fundamental Declaration number 2. affirms the role of canonical Scripture as being the ultimate rule—this being of both the Old and New Testaments. Fundamental Declaration number 4. Also affirms the Thirty-Nine articles as a valid measure for the authorised standard of worship and doctrine in this Church.

Article VI of The Thirty-nine Articles of Religion states that “whatsoever is not read therein [in the Holy Scripture], nor may be *proved* thereby {my emphasis}, is not to be required of any man, that it should be believed as an article of the Faith” or pertaining to Salvation.

The doctrine of marriage in the Anglican Church affirms the Biblical standard of marriage as between one man and one woman only; a definition of marriage affirmed by Jesus himself (Matthew 19:4-6). This doctrine is founded on canonical Scripture—which does not affirm any other form of marriage. Reverend Canon Professor Dorothy Lee's reference to other forms of marriage found in the Bible as support for marriage other than between one man and one woman is poor exegesis. Interpreting descriptive passages as instructive can lead to errant thinking and doctrine.

Scripture also clearly forbids same-sex sexual relationships in both the Old and the New Testament (and, as Article VII of Religion reminds us, the Old Testament is not contrary to the New. We are not exempt from the moral law of the Old Testament, under which same-sex relationships fall). It requires quite creative interpretation of Scripture to dismiss the anathema with which God holds such sexual relationships—or ANY sexual relationship outside of a marriage covenant between one man and one woman. Any such interpretation which arrives at the conclusion that same-sex relationships are sanctioned by God, or pleasing enough to be blessed by Him, is certainly without Scriptural proof or precedent. Article XX of Religion 'Of the Authority of the Church' states, “it is not lawful for the Church to ordain anything contrary to God's Word written, neither may it so expound one place of Scripture, that it be repugnant to another”. It is not possible to reconcile the fullness of Scripture to ordain any sexual relationship outside of marriage between one man and one woman. Therefore, same-sex marriage, while permissible under Australia law, is contradictory to the Fundamental Declarations and Ruling Principles in the Constitution of the Anglican Church of Australia, and as such, so is the blessing of such a union.

Rev Canon Professor Dorothy Lee discusses several aspects pertaining to the blessing of civil marriages in general in the supporting material presented by the Synod of the Wangaratta Diocese for the present case

before the tribunal. Her arguments often sound convincing and non-contrary to Scripture, but a closer examination reveals certain logical and theological errors.

She refers to the act of blessing in the Bible and in Anglican life, rightly noting that we can confer blessing to all living creatures. She however equivocates on the definition of blessing by suggesting that blessing, being available for all, also means that marriage unions not ordained by God can be blessed with Biblical precedent. To bless a person is not synonymous with blessing their union. Conversely, to withhold blessing from a same-sex marriage does not mean it is necessary to withhold blessing from a same-sex attracted person.

Rev Canon Professor Dorothy Lee also refers to the precedent of a change in Anglican tradition in regard to the blessing of civil marriages between a man and a woman, particularly with respect to remarriage, asserting that, "Gay and lesbian married couples are like divorced couples before 1985". Here the error lies with conflating the issues of divorce, remarriage and same-sex relationships, and equivocating on the definition of *couple*. These are not one and the same, and should not be treated as such, particularly as the Scripture does not treat them as the same. While there is Biblical precedent for allowable divorce, there is no Biblical precedent for same-sex marriage.

Additionally, it is in itself fallacious to measure the fidelity of a claim to Scriptural acceptance of same-sex marriage against a man-made decision regarding a change in tradition for divorce and remarriage. As Article XXI of Religion 'Of the Authority of General Councils' states "[men] may err, and sometimes have erred, even in the things pertaining unto God." It is irrelevant whether the decision pertaining to divorce and remarriage is correct or not in reference to deciding whether the blessing of civil marriages as proposed by the Synod of the Wangaratta Diocese be authenticated. The yardstick used should not be previous decisions, rather it should be the fullness of Scripture as underscored in Canon and the Articles of Religion.

The issue of whether the blessing in question be adopted, or not, is not one of culture, nor of conscience. Were it a question of culture, then as Article XXXIV of Religion states, it would be within the authority of the Church to change tradition. However, as this same article notes, nothing should be "ordained against God's Word", and blessing that which God has not blessed is contrary to Scripture. While the Synod of the Wangaratta Diocese states (6.2 of the Primary Submission) that teaching on marriage is not a question of doctrine nor of faith, and therefore dismisses the notion of inconsistency with doctrine, it does become a question of doctrine when the reference turns to same-sex marriage. Stating in 9.2 of the submission that Ministers have freedom of conscience not to perform such a service (of blessing), indicates the inherent recognition that there may be sufficient reason to question the validity of such a service. If such a service were truly consistent with Scripture, there should be no need for a freedom of conscience clause.

Finally, it becomes a question of whether the Anglican Church of Australia recognises the authority of Scripture as it pertains to Articles of Faith and issues of Salvation. While the Synod of the Wangaratta Diocese may argue that the blessing of same-sex marriage is not an Article of Faith, it does pertain to salvation. When Scripture clearly tells us that those who practice any sexual relationship outside of a marriage union between one man and one woman will not see the Kingdom of God, we must take this very seriously as an issue regarding Salvation. The question is not whether we think this is fair. The question is whether this is what Scripture tells us, regardless of how it may make us feel. To bless such relationships may indeed jeopardise the eternity of a person.

2. Whether the regulation is validly made pursuant to the Canon Concerning Services 1992.

Pursuant to the Canon Concerning Services 1992, the General Synod prescribes as follows:

5. (3) All variations in forms of service and all forms of service used must be reverent and edifying and must not be contrary to or a departure from the doctrine of this Church.

While the Synod of the Wangaratta Diocese submits that the regulation does not pertain to doctrine, and thus is exempt from the prescription of the Canon Concerning Service 1992, same-sex marriage is a departure from

the doctrine of this Church as established above, therefore the aforesaid regulation is not made validly pursuant to this Canon.

Response to the second Reference:

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.

My response to question 1 of the second reference is as for question 1 of the first reference, see above.

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.

My response to question 2 of the second reference is as for question 2 of the first reference, see above.

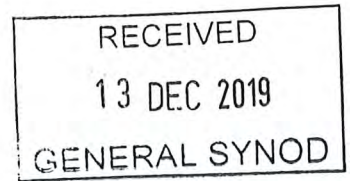
3. Whether, in light of the determinations to be made in Questions 1 & 2, the Regulations are validly made pursuant to the Canon Concerning Services 1992.

In light of questions 1 & 2, the Regulation Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019 made by the Synod of the Diocese of Wangaratta is not validly made pursuant to the Canon Concerning Services 1992.

Submission to the Appellate Tribunal Regarding The Blessing of Same Sex Marriages.

December 12th, 2019

The Registrar,
Appellate Tribunal
General Synod Office
Anglican Church of Australia
189 Kent Street,
Sydney NSW 2000.



appellatetribunal@anglican.org.au

Dear Registrar,

I appreciate the opportunity to make a submission with regard to the Primate's referral to the Appellate Tribunal concerning the recent decision of the Synod of the Diocese of Wangaratta to allow the Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019.

I submit that the answers to both of the Primate's questions of 21/10/2019 concerning "the Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019", must be a resounding - NO ! To respond in any other way would be "contrary to and a departure from the doctrine of the Anglican Church of Australia". (Canon 19,1988, S(3))

The Constitution of the Anglican Church of Australia essentially declares that:

- the faith of the Anglican Church of Australia is set forth in the Nicene Creed and in the Apostles' Creed;
- the canonical Scriptures of the Church is the ultimate rule and standard of our faith given by the inspiration of God;
- the Church will always obey the commands of Christ and faithfully follow his teachings; and
- the Church approves the doctrine and principles embodied in the Book of Common Prayer (Ruling Principles (RP) Chapter 2). In any revision, all statements, forms and rules must be consistent with the Fundamental Declarations contained herein.

It is my belief that God's redeemed people, and therefore God's Church, are called on by God to live distinctively different lives to the world that they are a part of. God's people are called on to promote and teach and be a living example of God's standards for holy living. Therefore, it is totally inappropriate for God's church to be eager to bless anything that God has declared to be ungodly, or immoral, or worldly, and, in this case, to be unnatural sexual relations (Romans 1). We note that In Romans chapter 1, it is not God's blessing that is being poured out on such behaviour, but his wrath.

Therefore, I believe that the Blessing of Persons Married According to the Marriage Act 1961, Regulations 2019 as approved by the Synod of the Diocese of Wangaratta is completely repugnant to and a serious departure from both Holy Scripture and the Fundamental Declarations and Ruling Principles in the Constitution of the Anglican Church of Australia.

... 2/

The decision of the Synod of the Diocese of Wangaratta is an attempt to bless what is forbidden in Holy Scripture (Fundamental Declarations 1,2 & 3), and is a serious departure from the teaching of the Book of Common Prayer (Ruling Principal [1.4]).

From the fundamental declaration of The Form of Solemnisation of Matrimony within the Book of Common Prayer our Church affirms that ;

- Marriage is between a man and a woman;
- Such a marriage has a divine origin - "an "honourable state, instituted of God";
- One of the primary purposes of marriage is for "the procreation" and "nurture" of children", ... "for the praise of his holy Name";
- Marriage proclaims a Christian reality – it signifies the mystical union that is betwixt Christ and his Church; and
- Those who are joined together other than God's Word allows, are not lawfully married before God.

(All of which is soundly grounded in the teaching of Holy Scripture)

The Church and its ministers have no divine right or authority to declare God's blessing on what God has not "instituted" or blessed.

Our Anglican formularies declare that the adoption of such a resolution as that of the Diocese of Wangaratta is contrary to the Word of God, the Law of God, our Church heritage and tradition, and the gospel of salvation.

The Anglican Church of Australia must be swift to denounce any Synod that moves to adopt such a regulation as being in breach of its constitutional responsibilities.

We believe this issue is so crucial for our church, that it has the potential to seriously undermine the Anglican Church within Australia and therefore, we would urge members of the Appellate Tribunal to consider this matter prayerfully, and with great pastoral care and wisdom.

Let's make sure that we continue to stand firm in the faith, and live in a way that is worthy of our calling, and that will bring glory and honour to God, our heavenly Father.

Yours sincerely in the service of our Lord and Saviour, Jesus Christ,

Dr. Kay Keng Khoo,

IN THE APPELLATE TRIBUNAL
ANGLICAN CHURCH OF AUSTRALIA

IN THE MATTER of the questions referred by the Primate under Section 63(1) of the
Constitution on 5 September 2019 and 21 October 2019

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

SUBMISSIONS BY EQUAL VOICES LTD (ABN 68 617 131 781)

Introduction

1. Equal Voices Ltd (**Equal Voices**) is a national not-for-profit organisation supporting LGBTIQA+ Christians and allies in seeking an 'equal place at the table' for LGBTIQA+ people in the Church and the world. This submission is made on behalf of Equal Voices Anglican, a network within the national Equal Voices organisation. Equal Voices Anglican represents, according to official Australian Government statistics, an estimated 300 000 LGBTIQA+ people in the Anglican Church of Australia.¹ Of this group of people a substantial number would directly benefit, now or in the future from new provisions such as the *Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019* (**Regulations**).
2. Equal Voices seeks marriage equality for its members and believes this to be God's loving will and intention. The Regulations do present a positive step forward in this area, but they fail to offer marriage equality to LGBTIQA+ Anglicans. The Regulations do not offer ritual and sacramental provisions that are available to other Anglicans and they fail to affirm the civil relationships of sexually and gender diverse people as equal gifts from

¹ This is a conservative calculation, based on Anglican census figures (of more than 3 million Anglicans at the last census) and the findings of the Australian Federal Government's Human Rights Commission 'Face the Facts' research, which shows at least 11 in 100 Australians identifying as lesbian, gay, bisexual, transgender or intersex – see further: <https://www.humanrights.gov.au/our-work/education/face-facts-lesbian-gay-bisexual-trans-and-intersex-people>

God. Equal Voices acknowledges that the limited assistance the Regulations give to sexually and gender diverse people and others is a positive step forward. However, it is a highly restrained and conservative provision which does not adequately respond to the needs of the LGBTIQA+ Anglican community.

Summary of these submissions

3. Equal Voices supports the Primary Submissions made by the Synod of the Diocese of Wangaratta on 6 November 2019 in relation to the questions currently before the Appellate Tribunal. The questions before the Appellate Tribunal reflect wider debates on marriage doctrine which should not be confused with the limited and specific provisions of the Regulations.
4. Of the questions asked by the Primate on 5 September 2019:
 - 4.1 **Question 1** does not raise a matter under the Constitution and implies the Regulations could be a theological and ecclesiological change rather than addressing an urgent pastoral issue. In so far as it relates to the Fundamental Declarations and Ruling Principles, the answer is 'Yes'.
 - 4.2 **Question 2** raises a question regarding the legitimacy of the Regulations in relation to the *Canon Concerning Services 1992*. Given recent significant changes to civil marriage law, the Regulations should be welcomed as a constructive expression of the missional imperatives of the *Canon Concerning Services 1992*. Question 2 should be answered 'Yes'.
5. Of the questions asked by 25 members of General Synod on 21 October 2019:
 - 5.1 **Question 1** asks for the Appellate Tribunal to rule on the doctrinal legitimacy of marital relationships between people of the same gender. This is beyond the Appellate Tribunal's authority. If it is found to be within the Appellate Tribunal's

auspice the answer should be 'Yes'.

5.2 **Question 2** queries the doctrinal legitimacy of any liturgical services relating to marital relationships between people of the same gender. This is beyond the Appellate Tribunal's authority. If it is found to be within the Appellate Tribunal's auspice the answer should be 'Yes'.

5.3 **Question 3** repeats Question 2 asked by the Primate on 5 September 2019. In the light of Equal Voices' responses to Questions 1 and 2 it should be answered 'Yes'. Given recent significant changes to civil marriage law, the Regulations should be welcomed as a constructive expression of the missional imperatives of the *Canon Concerning Services 1992*.

6. The issues relating to marriage equality and marriage doctrine in the Anglican Church of Australia are much wider conversations and are not impacted by the Regulations. These matters go well beyond the jurisdiction of the Appellate Tribunal. In so far as the Appellate Tribunal is able to rule on the legal validity of the Regulations, they should be found to be valid diocesan legislation.

Context

7. Equal Voices asks the Appellate Tribunal to deeply consider the difficult context in which it makes its decisions. In particular, Equal Voices notes the ongoing failure of the Anglican Church of Australia to listen to and honour LGBTIQA+ Anglicans as Gospel 'little ones' and 'weaker members' of the Body, in accordance with the teaching of Jesus and St. Paul's teaching in 1 Corinthians 12. Equal Voices requests that any deliberations on this matter are mindful of this and do not exacerbate a continuing ecclesiastical culture of shame, secrecy and silence experienced by LGBTIQA+ Anglicans, to which these Regulations offer some small redress.

8. Equal Voices refers the Appellate Tribunal to the *Open Letter of Anglican LGBTI+ Voices* for a fuller statement of this challenging context, its impact on LGBTIQA+ members of the

Church, and its invitation to a more positive living together in the Anglican Church of Australia. The text of which can be found at **Appendix A** of this submission and/or online at <https://www.equalvoicesanglican.org/open-letter.html>.

9. Additionally, Equal Voices notes the current social and political climate caused by the intense drive of some religious forces in Australian politics to legislate for ongoing discrimination against LGBTIQ+ people by religious groups. This has had a very real impact on the spiritual, emotional and physical wellbeing of LGBTIQ+ people. Especially those who are members of faith communities. Equal Voices asks the Appellate Tribunal to consider how through its deliberations it may avoid reinforcing this debilitating climate and protect and care for the wellbeing of the LGBTIQ+ members of the Anglican Church of Australia.

Question One asked by the Primate on 5 September 2019

Whether the regulation Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019 made by the Synod of the Diocese of Wangaratta is consistent with the Fundamental Declarations and Ruling Principles in the Constitution of the Anglican Church of Australia.

10. Equal Voices affirms the key points made by the Synod of the Diocese of Wangaratta in its Primary Submissions, in particular:
 - 10.1 The questions referred to the Appellate Tribunal relate to the *Canon Concerning Services 1992* and do not require interpretation of the Constitution.
 - 10.2 Dioceses are empowered by their own constitutions to make regulations for their own good order and governance. Whether such regulations fulfil this purpose is a matter of judgement for the Synod of that diocese.

10.3 The Regulations are not inconsistent with the Constitution. There is nothing in the Regulations that contravenes the Ruling Principles.

10.4 The Constitution was deliberately written to accommodate the diversity of Anglican tradition in Australia. As such diversity of opinion is accepted and encouraged, excepting any matters essential to the nature and character of the Anglican Church as part of the One Holy Catholic and Apostolic Church.

10.5 There is no doctrine which prevents the use of a liturgy such as what is included in the Regulations. This is supported by the rulings of Handley QC and Young J made in relation to the ordination of women to the diaconate, especially Handley QC's observation:

*"Notwithstanding the importance of the issues before us, the strongly held views on all sides, and the fundamental nature of the theological and biblical arguments which have been raised, in my opinion the questions involved are not part of the Christian faith professed by the Church, they are not dealt with in the Creeds, and do not directly involve matters necessary for salvation. The question before us therefore does not involve any question of 'doctrine' as that expression is used in the Constitution."*²

10.6 There is a clear distinction between faith, doctrine and discipline which has been highlighted in previous Appellate Tribunal rulings on the ordination of women.

10.7 The ancient Creeds and the 1662 Book of Common Prayer do not expressly define marriage.

10.8 The 1662 Book of Common Prayer is a product of very different historical and cultural circumstances. It reflects culturally limited understandings of sex and gender which were drawn from the societal attitudes and legalities of the time.

² Report of the Appellate Tribunal Opinion on the Ordination of Women to the Office of Deacon Canon 1985 4 March 1987.

The Anglican Church of Australia faced a similar issue when deliberating on the doctrinal validity of the ordination of women.

10.9 The Appellate Tribunal previously found that a canon providing for the marriage of divorced persons, regardless of cause, would not contravene the Fundamental Declarations or Ruling Principles.³ The marriage service in the 1662 Book of Common Prayer is not a definitive and binding statement on what persons may be blessed, or otherwise regarded as worthy of God's favour.

11. Equal Voices affirms the points made by the Synod of the Diocese of Wangaratta regarding Scripture in relation to marriage including:

- 11.1 the complexity and ambiguity of biblical texts;
- 11.2 the ongoing profound debates over interpretation among scholars; and
- 11.3 the accepted divergence of opinions among Anglicans where it does not explicitly contravene the Fundamental Declarations.

12. Equal Voices additionally notes that in relation to the issue of relationships between people of the same gender and marriage doctrine there has not been adequate space or acknowledgement given to the people most affected by these debates. This was evidenced in the absence of any open and community connected LGBTIQA+ contributors to *Marriage, Same-Sex Marriage and the Anglican Church of Australia*. This was a document recommended by the Appellate Tribunal to participants of this current matter. Without such contributors a full understanding of these matters cannot be gained by any party.

13. Historically the Anglican Church has had an intimate and respectful relationship with civil authority. Throughout its relatively short existence, the Anglican Church of Australia has taken seriously the needs of wider society and political authority. This is reflected in the Ruling Principles, the Book of Common Prayer and the Thirty-Nine Articles (particularly

³ *Opinion of the Appellate Tribunal on the Marriage of Divorced Persons and admission of women to Holy Orders* 8 February 1980.

Articles XXXV-XXXIX and the prescribed Homilies). In light of recent changes to civil law, the Regulations are consistent with the Fundamental declarations and Ruling Principles of the Constitution.

14. The Fundamental Declarations and Ruling Principles of the Constitution speak to the purpose of the Anglican Church of Australia. The spirit and intent of these is to enable the Anglican Church of Australia to serve God and God's people, both doctrinally and pastorally. In Australia there has been a significant change in societal attitudes towards sexuality and gender in recent years which led to the passing of civil marriage equality legislation in 2017. This new affirmation and welcome of LGBTIQA+ people by wider society has not been reflected in the Anglican Church of Australia. The Regulations fall far short of such welcome and affirmation but do represent a legitimate step towards much needed engagement which does go to the spirit and intent of the Fundamental Declarations and Ruling Principles.
15. The Regulations offer some small level of acknowledgement and reception of fresh human realities. The Regulations continue to respect the current diversity of opinion in the Anglican Church of Australia without contravening the Constitution.
16. While the Regulations may be regarded as the first of their kind in Australia, they are not unique in the global Anglican Communion. Provinces in the United States of America, Scotland, New Zealand and Brazil have been able to legislate for the blessing or marriage of the relationships of people of the same gender. Compared to the work of some of these provinces the Regulations are limited and quite restrictive.
17. The Regulations touch on an issue that is currently impacting many people. There are many sexually and gender diverse people who are members of the Anglican Church of Australia. Often these same people have lived in flourishing relationships for decades. Some are now civilly married. To suggest that such a relationship contravenes the Fundamental Declarations and Ruling Principles is to suggest that such people are unable to be members of the Anglican Church of Australia. The Regulations before the Appellate

Tribunal make only a very small gesture of acknowledgement to these committed members of this Church.

Question Two asked by the Primate on 5 September 2019

Whether the regulation is validly made pursuant to the Canon Concerning Services 1992.

18. Equal Voices affirms the key points made in response to Question Two by the Synod of the Diocese of Wangaratta in its Primary Submissions, in particular:

18.1 The liturgy in the Regulations is clearly and unambiguously a service of blessing, not a marriage liturgy.

18.2 There is a long tradition of prayers and blessings within Anglican life and a liturgy of blessing for a civil marriage should not be held to a different standard than liturgies for blessing pets, meetings, people and the like.

18.3 The Book of Common Prayer does not restrict the range of blessings used to support people in flourishing life and faith.

19. The limited nature of the Regulations' recognition of committed LGBTIQA+ partnerships is highly disappointing to Equal Voices and its Anglican members. This measure is very conservative and does not meet the deep needs of LGBTIQA+ people for full affirmation and membership in the Anglican Church of Australia. It does respond to other pastoral needs and opens up an alternative pathway for many people, whether they of the opposite or same gender, to have their partnership acknowledged by their church community. As such, the Regulations are consistent with the intention of the *Canon Concerning Services 1992* and are validly made.

20. The blessing of relationships, circumstances, people and living things has a long tradition in Anglicanism. Such blessing does not equate to acceptance and affirmation of every aspect of that relationship, circumstance, person or living thing. This can be seen when considering the difference between a service of thanksgiving and a baptism. A service of

thanksgiving may recognise the presence of God's grace, but it does not equate to baptism. Similarly, the Regulations do not represent an affirmation of every aspect of the people who have entered into civil marriage. Nor does it equate to sacramental marriage. Yet such a liturgy does offer an affirmation of the love between two people and recognises the presence of God's grace. In light of such precedents the Regulations are consistent with the intention of the *Canon Concerning Services 1992* and are validly made.

Question One asked by 25 members of General Synod on 21 October 2019

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 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.

21. This question asks the Appellate Tribunal to rule on the doctrinal legitimacy of the provided liturgy in blessing marital relationships between people of the same gender. Such a decision requires further doctrinal and synodical processes and is outside the jurisdiction of the Appellate Tribunal. In so far as the Appellate Tribunal is able to rule on this matter, the answer should be 'Yes'.
22. While this question specifically relates to a civil marriage between a couple of the same gender, the points made previously in this submission stand. The Creeds, the 1662 Book of Common Prayer and the Thirty-Nine Articles do not make reference to relationships between people of the same gender. The Scriptural references to such relationships are ambiguous and have been the subject of debate for centuries. When faced with similar difficulties in relation to divorce and the ordination of women, the Anglican Church of Australia has been able to come to a new understanding of doctrine.
23. Article XXXII of the Thirty-Nine Articles implies the gender of deacons, priests and bishops and permits them and "all other Christian men" to marry. When women's ordination was legislated for, there was no question on whether a female member of clergy was permitted to marry. The Anglican Church of Australia adapted the historical understanding of Article XXXII in light of new understandings. The Fundamental Declarations and Ruling Principles refer to principles of doctrine that were written in a

historical context very different to modern-day and this should be taken into consideration when answering this question.

24. The Regulations have been made in response to the ongoing revelation of the complexity and diversity of God's people and are supported by decades of affirming biblical scholarship and conversation. These Regulations speak to the missional work of the Anglican Church of Australia and continue a long tradition of constructive engagement with civil society and the civil magistracy. In the absence of any explicitly non-affirming doctrinal evidence, the Regulations neither challenge the doctrine of the Anglican Church of Australia nor are inconsistent with its Fundamental Declarations or Ruling Principles.

Question Two asked by 25 members of General Synod on 21 October 2019

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.

25. This question asks the Appellate Tribunal to rule on the doctrinal legitimacy of any marital relationship between people of the same gender. Such a decision requires further doctrinal and synodical processes and is outside the jurisdiction of the Appellate Tribunal. In so far as the Appellate Tribunal is able to rule on this matter, the answer should be 'Yes'.
26. This question is extraordinarily broad and asks the Appellate Tribunal to imagine both a range of relationships and also to rule on other forms of service not yet in existence which goes well beyond the role of the Appellate Tribunal.
27. While the issue of sacramental marriage between two people of the same gender could be regarded as being open for debate, this question and the Regulations relate only to the blessing of a civil marriage between persons other than "one man and one woman". There is a long tradition within the Anglican Church of Australia of blessing. There is no doctrine within the Church which would be contravened by the blessing of a same gender

civil marriage.

28. Equal Voices further notes that there is no unambiguous doctrine in the Anglican Church of Australia that explicitly denies sacramental marriage to people in a same gender relationship. Very little Scriptural evidence speaks against same gender relationships. Just six verses negatively reference such relationships. These are Genesis 19:4-11, Leviticus 18:22, Leviticus 20:13, Romans 1:26-27, 1 Corinthians 6:9-11 and 1 Timothy 1:8-10. All of these verses could be regarded as speaking against sexual abuse or against a specific sexual act, rather than the loving, respectful and faith filled marriage between two people of the same gender.

29. The Creeds and the Thirty-Nine Articles are silent on all forms of marriage and the 1662 Book of Common Prayer does not explicitly deny the availability of sacramental marriage between two people of the same gender. Historically and traditionally the doctrinal understanding of marriage and gender has continued to evolve, especially in Anglicanism. In a Church that has come to new doctrinal understandings of divorce and the ordination of women, a pathway is open for a new doctrinal understanding of marriage between people of the same gender. In circumstances where sacramental marriage is within the auspices of the Fundamental Declarations and Ruling Principles of the Constitution of the Anglican Church of Australia it is clear that the blessing of a civil marriage is doctrinally and constitutionally valid.

Question Three asked by 25 members of General Synod on 21 October 2019

Whether, in light of the determinations to be made in Questions 1 & 2, the Regulations are validly made pursuant to the Canon Concerning Services 1992.

30. In the light of the responses to Questions One and Two in this Submission, Question Three should be answered 'Yes'.

31. The Regulations were canonically produced and issued after more than adequate notice and consultation.

32. Equal Voices commends the Synod of the Diocese of Wangaratta for its work on these Regulations and its acknowledgement of the very real need for such legislation by LGBTIQA+ Anglicans.

Conclusion

The questions should therefore be answered as follows:

Question 1 – yes, in so far as the Appellate Tribunal can rule on this matter

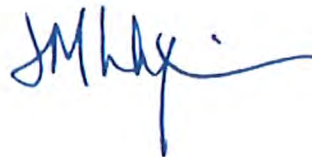
Question 2 – yes, in so far as the Appellate Tribunal can rule on this matter

Question 3 – yes, in so far as the Appellate Tribunal can rule on this matter

Question 4 – yes, in so far as the Appellate Tribunal can rule on this matter

Question 5 - yes

13 December 2019

A handwritten signature in blue ink, appearing to read 'JM Inkpin', with a long horizontal flourish extending to the right.

JOSEPHINE McDONNELL INKPIN
on behalf of Equal Voices

It's Time to Embrace Us

**OPEN LETTER TO
THE ANGLICAN CHURCH OF AUSTRALIA
from Anglican LGBTI+ Voices**

We speak out

We speak out today as deeply committed Anglicans who are also LGBTI+ (that is: Lesbian Gay, Bisexual, Transgender, Intersex and other sexually and gender diverse) people. We speak out as your siblings who have personally suffered shame and silence because of our sexuality and/or gender. We speak out on behalf of so many other similar Anglicans who are still unable to speak due to fear and pain. We speak out of sorrow at the mistreatment of sexually and gender diverse people by the Church we love, but with hope and an invitation to renewed vision and relationships. We speak out so that everyone may at last be embraced with the love that God in Jesus Christ has for all of us.

We grieve

For ***we grieve***. We grieve for the sins of homophobia and transphobia which continue to bedevil the Church, and in which we too, as members of it, are complicit. We grieve for so many lives which have been lost, hearts which have been broken, and precious souls which have been horribly marred. We grieve that the Church is adrift in the midst of today's sea-change in societal understanding and affirmation of sexually and gender diverse people. We grieve above all that the love of Christ is obscured by so much Christian hardness of heart and slowness to respond.

We protest

We protest the silencing, repression and denial of our religious and wider freedom. Some parts of the Anglican Church of Australia appear actively hostile. We therefore vigorously protest the exclusion of debate, and the resistance to the removal of religious privileges which impact on the health and welfare of LGBTI+ children, families, teachers and other church staff. We also protest the silence of so many other parts of our Church, the hesitant leadership that will not commit itself to us. Martin Luther King said that 'In the End, we will remember not the words of our enemies but the silence of our friends.' We feel this keenly. For whilst we give thanks to God for the wonderful examples of Australian Anglican inclusion – in the fine work of so many parishes, schools, welfare projects and individuals – we lament the profound corporate institutional inertia, and the pernicious silence and lack of empathy that persists towards us. 'Nothing about us without us' is a widely understood precept in our world today. Yet in our church 'almost everything about us without us' seems to be the rule. We therefore invite participation, the sharing of our experience and faith stories, and the development of affirming policies and education.

We respect difference

We profoundly respect difference, including the genuinely held views of other Anglicans who oppose us. We recognise that growth in theological understanding and change is

complex. We approach with humility our common scriptures, tradition and reason. Yet, just as we cannot speak from the experience of others, we ask that we are heard, and our own difference valued. We ask that decades of affirming biblical interpretation and enquiry be honoured and options provided for liturgical blessings and for the sacrament of marriage for LGBTI+ people. We ask for our place at the table and full opportunity to use our God-given gifts.

We demand address of spiritual abuse

Above all, we demand address for the spiritual abuse faced by sexually and gender diverse people. The appalling revelations of child abuse in which our churches have been complicit should surely teach us about the horrific consequences of silencing and ignoring vulnerable people, and the vital importance of listening, transparency and restorative justice. Typically however, LGBTI+ Anglicans are ignored or kept at arms length, even when issues of huge importance to us are discussed or determined. Due to overt hostility, covert disapproval and uncertainty, genuinely safe spaces are so often hard to find and many LGBTIQA Anglicans do not feel able to be themselves (the persons God loves so much) in church settings. Churches often talk about being 'welcoming' to us, but it is positive affirmation and empowerment - not mere toleration - at Christ's open table, that is required. For our sexualities and genders are not aspects of the Fall, but diverse expressions of the divine image and continuing divine creation and gifts to enlarge the life and freedom of all.

We speak out for our Faith

We speak out as faithful members of the Anglican Church of Australia. We speak out as Christians with different theological, ecclesiological and liturgical emphases, yet as one voice. We speak out with profound concern for the future of the Church whose credibility and mission are now at stake because of how it treats us and others on its margins. We believe the soul of Anglicanism is at stake in the way our lives and bodies are treated. For centuries, the best spirit of the Anglican tradition, being both Catholic and Reformed, has held profound differences in creative tension and approached new issues of human dignity (from the questioning of slavery to the emancipation of women) with attitudes of openness and reception. It is at the heart of the Anglican Reformation settlement that 'it is not necessary that Traditions and ceremonies be in all places one and utterly alike'. With such a spirit of generous love, the Anglican Communion has spread worldwide, taking different forms whilst holding to the essentials of faith. Today this is in jeopardy as a sectarian spirit of exclusion is among us, rejecting the fruitful developments of LGBTI+ affirmation in other parts of the Anglican Communion and leaving little or no place for differences among us in Australia. Like the Gentiles in the early Church, we wait in faith, hope and love for the recognition by others of God's equal calling to us, different in some aspects of lifestyle, but one in Christ. The Holy Spirit is doing great things among us and in the wider world through sexually and gender diverse people. We believe they can be as sources of renewal to a weary and defensive Church. Like the Gentiles in the early Church, we therefore call today's Peter and Paul to account, that we may all join as one in the transforming love of God. May those who have ears to hear, hear.

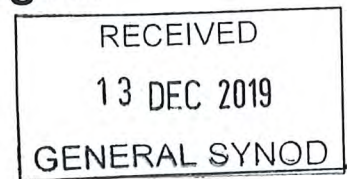
We call for repentance

We call for repentance by the Church for its part in the violence, abuse and lack of acceptance of LGBTIQA people. We call for a recognition of our full humanity and for equal participation in church and society. We call for a full gospel which embodies the good news Jesus brought to the poor and marginalised and which centres on God's grace, not narrow religious traditions of human law. We call for dignity, justice and renewal. May those who have ears to hear, hear.

Anglican LGBTI+ Voices is the confidential LGBTI+ network of Equal Voices Anglicans: a part of Equal Voices (the national movement of LGBTI+ Christians and allies)

Submission to the Appellate Tribunal Regarding The Blessing of Same Sex Marriages.

December 11th, 2019



The Registrar,
Appellate Tribunal
General Synod Office
Anglican Church of Australia
189 Kent Street,
Sydney NSW 2000.

appellatetribunal@anglican.org.au

Dear Registrar,

We appreciate the opportunity to make a submission with regard to the Primate's referral to the Appellate Tribunal concerning the recent decision of the Synod of the Diocese of Wangaratta to allow the Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019.

We submit that the answers to both of the Primate's questions of 21/10/2019 concerning "the Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019", must be a resounding - NO ! To respond in any other way would be "contrary to and a departure from the doctrine of the Anglican Church of Australia". (Canon 19,1988, S(3))

The Constitution of the Anglican Church of Australia essentially declares that:

- the faith of the Anglican Church of Australia is set forth in the Nicene Creed and in the Apostles' Creed;
- the canonical Scriptures of the Church is the ultimate rule and standard of our faith given by the inspiration of God;
- the Church will always obey the commands of Christ and faithfully follow his teachings; and
- the Church approves the doctrine and principles embodied in the Book of Common Prayer (Ruling Principles (RP) Chapter 2). In any revision, all statements, forms and rules must be consistent with the Fundamental Declarations contained herein.

It is our belief that God's redeemed people, and therefore God's Church, are called on by God to live distinctively different lives to the world that they are a part of. God's people are called on to promote and teach and be a living example of God's standards for holy living. Therefore, it is totally inappropriate for God's church to be eager to bless anything that God has declared to be ungodly, or immoral, or worldly, and, in this case, to be unnatural sexual relations (Romans 1). We note that In Romans chapter 1, it is not God's blessing that is being poured out on such behaviour, but his wrath.

Therefore, we believe that the Blessing of Persons Married According to the Marriage Act 1961, Regulations 2019 as approved by the Synod of the Diocese of Wangaratta is completely repugnant to and a serious departure from both Holy Scripture and the Fundamental Declarations and Ruling Principles in the Constitution of the Anglican Church of Australia.

... 2/

The decision of the Synod of the Diocese of Wangaratta is an attempt to bless what is forbidden in Holy Scripture (Fundamental Declarations 1,2 & 3), and is a serious departure from the teaching of the Book of Common Prayer (Ruling Principal [1.4]).

From the fundamental declaration of The Form of Solemnisation of Matrimony within the Book of Common Prayer our Church affirms that ;

- Marriage is between a man and a woman;
- Such a marriage has a divine origin - "an "honourable state, instituted of God";
- One of the primary purposes of marriage is for "the procreation" and "nurture" of children", ... "for the praise of his holy Name";
- Marriage proclaims a Christian reality – it signifies the mystical union that is betwixt Christ and his Church; and
- Those who are joined together other than God's Word allows, are not lawfully married before God.

(All of which is soundly grounded in the teaching of Holy Scripture)

The Church and its ministers have no divine right or authority to declare God's blessing on what God has not "instituted" or blessed.

Our Anglican formularies declare that the adoption of such a resolution as that of the Diocese of Wangaratta is contrary to the Word of God, the Law of God, our Church heritage and tradition, and the gospel of salvation.

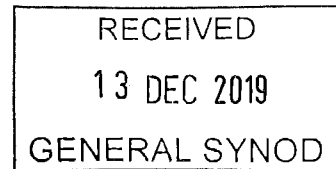
The Anglican Church of Australia must be swift to denounce any Synod that moves to adopt such a regulation as being in breach of its constitutional responsibilities.

We believe this issue is so crucial for our church, that it has the potential to seriously undermine the Anglican Church within Australia and therefore, we would urge members of the Appellate Tribunal to consider this matter prayerfully, and with great pastoral care and wisdom.

Let's make sure that we continue to stand firm in the faith, and live in a way that is worthy of our calling, and that will bring glory and honour to God, our heavenly Father.

Yours sincerely in the service of our Lord and Saviour, Jesus Christ,

Dr. Kay Keng Khoo,
And also on behalf of
Rev Trevor Goodman-Jones,
Mrs. Glynis Goodman-Jones,
Rev Jacob Ng,
Mrs. Sabine Ng,
Dr. Peter Yen
West Perth group of Anglicans



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Friday, 13 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

**Blessing of Persons Married according to the Marriage Act 1961 Regulations 2019
(Diocese of Wangaratta)**

Dear Anne,

I am pleased to **attach** the primary submissions of the Diocesan Council of the Diocese of Tasmania with respect to the recent references of 5 September and 21 October 2019 by the Primate under section 63 of the Constitution.

I note that Rule 9(6) of the *Appellate Tribunal Rules 1988* requires that "Ten copies of the submission and accompanying documents (including witness statements) shall be filed."

Can you please confirm that in the circumstances where submissions are filed electronically that the Tribunal will not also require an additional ten hard copies. If such copies are required, we please request a suitable extension of time to file such copies.

Yours faithfully,

James Oakley
General Manager/Registrar

Encl

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**The Blessing of Persons Married According to the
Marriage Act 1961 Regulations 2019 (Diocese of Wangaratta)
("Wangaratta Regulations")**

**References of 5 September and 21 October 2019 under Section 63 of the Constitution
("References")**

**Primary Submissions of the Diocesan Council of the Diocese of Tasmania
("Tasmania")**

Summary

1. Tasmania submits that the Wangaratta Regulations are invalid for the following reasons:
 - (a) The Synod of the Diocese of Wangaratta does not have power to make the Wangaratta Regulations either in its own right or under the *Canon Concerning Services 1992*; and
 - (b) The Wangaratta Regulations are inconsistent with the doctrine of the Church, the Fundamental Declarations and the Ruling Principles and contrary to Section 5 of the Constitution.
2. Tasmania requests and reserves the right to make further submissions in accordance with the timetable established by the Appellate Tribunal and otherwise in accordance with the *Appellate Tribunal Rules 1988*.

Questions

3. Tasmania submits that the References should be answered as follows:

5 September

Response

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

Question 2: The Regulations are not validly made.

21 October

Response

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

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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.

Reasoning

The Wangaratta Regulations purport to regulate spiritual affairs

4. The Wangaratta Regulations purport to regulate the provision of blessings for certain marriages under the *Marriage Act 1961* (Cth).
5. The granting of a blessing of such a marriage is a spiritual matter, as noted by the Reverend Canon Professor Dorothy Lee in her Address to the Synod of the Diocese of Wangaratta on 31 August 2019:

"Blessing is an important concept in the biblical world. To be blessed by God means to receive God's favour in protection of us and provision for us....

The same notion of blessing is found in the New Testament but with a new dimension. Blessing is still about covenant, relationship and justice but now it is also eschatological, the promise of God's kingdom finally overturning the values of the world....

The Anglican tradition, based on Scripture, takes blessing very seriously. Liturgy and worship represent the core of our life together, grounded in God's blessing of us, and all for whom we pray, along with our responsive blessing (praise) of God....

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 [gay and lesbian married couples] 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?" (pages 1 -2)

6. A conscientious objection to the granting of such a blessing is also a spiritual matter.
7. The Wangaratta Regulations provide for both the blessing of such marriages (section 4) and the conscientious objection of a minister to such a blessing (sections 5 and 6).
8. Accordingly, the Wangaratta Regulations purport to regulate spiritual affairs.

The Wangaratta Regulations are inconsistent with the authorised standards of faith and doctrine of the Church in Victoria

9. Tasmania submits that the "authorised standards of faith and doctrine of the Church in Victoria" are those in existence as at the original creation of the Diocese of Victoria (or

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at the time of enactment of the 1854 Act), subject only to the coming into effect of the national Constitution in Victoria pursuant to the *Anglican Church of Australia Constitution Act 1960* (Vic).

10. This analysis is consistent with the Constitution of the Province of Victoria as provided for in the *Province of Victoria Constitution Act 1980* (**1980 Act**) which does not contain “authorised standards of faith and doctrine” and instead provides that:

“This Constitution shall be always subject to the Constitution of the Church of England in Australia.” (Section 19)

11. The blessing of same sex marriages is (at best) novel and wholly inconsistent with authorised standards of faith and doctrine of the Church in Victoria and the Fundamental Declarations and Ruling Principles set out in the Constitution.

The Synod of the Diocese of Wangaratta does not have power to regulate spiritual affairs or to legislate in a manner inconsistent with the authorised standards of faith and doctrine of the Church in Victoria

12. The powers of the Synod of the Diocese of Wangaratta are derived upon the formation for the Diocese of Wangaratta as recognised by the *Church of England Act 1903* (Vic) (**1903 Act**).
13. Relevantly, the 1903 Act provides as follows:

“2. First Church assemblies in Ballarat, Bendigo and Wangaratta to be deemed duly convened and constituted

Notwithstanding anything contained in the said Act or in any Act amending the same, the first Assembly of the licensed clergy and the laity of the diocese of Ballarat convened by the Bishop thereof and held in the year One thousand eight hundred and seventy-five and of the dioceses of Bendigo and Wangaratta respectively convened by the Bishops thereof and held in the year One thousand nine hundred and two shall as from the date of the holding of the first Assembly as aforesaid in each such diocese be deemed to have been duly convened and to have been legally held and constituted, and every lay representative taking part in or voting at any such first Assembly shall be deemed to have been duly elected and qualified as a lay member of such Assembly.”

14. The reference to the “said Act” is a reference to the *Church of England Act 1854* (Vic) (**1854 Act**).

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15. Accordingly, the powers of the Synod of the Diocese of Wangaratta are derived from, and constrained by, the powers originally granted to the Synod of Victoria under the 1854 Act.
16. The fact that the Diocese of Canberra-Goulburn (for example) has transferred certain areas in NSW to the Diocese of Wangaratta does not change the legislative powers of the Synod of the Diocese of Wangaratta.
17. The 1854 Act has been the subject of much commentary and analysis, including, relevantly, by the Appellate Tribunal in its *Determination dated 2 November 1989 in a reference made pursuant to Section 63 of the Constitution concerning the validity of the Ordination of Women to the Office of Priest Act 1988 of the Synod of the Diocese of Melbourne (1989 Determination)*: “There is no doubt at all that the 1854 Act is a most significant piece of legislation in the history of the Australian Church.”(page 8).
18. Section 5 of the 1854 Act provides that:

“no regulation act or resolution made or passed at any Assembly shall be valid which shall alter or be at variance with the authorised standards of faith and doctrine of the United Church of England and Ireland or shall alter the oaths declarations and subscriptions now by law or canon required to be taken made and subscribed by persons to be consecrated ordained instituted or licensed within the said Church.”
19. Tasmania submits that the reference to “the authorised standards of faith and doctrine of the United Church of England and Ireland” or the “oaths declarations and subscriptions... within the said Church” refer to such as apply within the Province of Victoria. Relevantly, terms such as standards of “faith” and “doctrine” are not limited to or constrained by the corresponding definitions or usage of such terms in the Constitution.
20. The 1989 Determination determines as follows:

“Plainly enough, however, the terms of the 1854 Act taken as a whole carry with them a series of subordinate legislative powers to pass regulations, Acts and resolutions respecting the regulation and management of the affairs of the Church within a diocese. Equally plainly, in our opinion, the powers conferred are not plenary in the sense that they entitle synods to legislate with respect to all affairs of the Church. We are obliged definitely to reject submissions to the contrary made on behalf of Melbourne and the Movement for the Ordination of Women....

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"First, section I of the Act was designed to remove any bar to the holding of synods, constituted by Bishop, clergy and representative laity, such as was thought to be imposed by the statutes of Henry VIII and Elizabeth. It is notable, however, that section I made the holding of a synod merely lawful, not mandatory. This circumstance in itself tends to deny any contemplation of a right to legislate at large upon the affairs of the Church within Victoria. The fact that the 1854 Act was facilitating and not mandatory as to the convening of synods is inconsistent with an intention or expectation that any exercise of the legislative powers which the Act conferred could produce any lack of uniformity with the wider Church upon essential matters of faith, doctrine and discipline.

Secondly, the whole history of the 1850's shows that, both in Victoria and in England, there was a positive intention not to depart from the "firm and unalterable attachment to the Doctrine, discipline and government of the United Church of England and Ireland"; and an equal desire to see those characteristics "maintained in the colony in all their integrity": Report of the Conference held in Melbourne on 24th June 1852; Border, op cit., 201.

Thirdly, the protracted legislative history and terms of the 1854 Act show that the prime purpose of the measure was to allow voluntary regulation and management by diocesan synodical government of the ecclesiastical matters which might expediently be dealt with by that means. The essential objects were to confer self-government on the diocese and to bind the members of the Church in their capacities as such, and in particular the Bishop and his successors. The scope of the government that was contemplated was necessarily local, municipal and internal to the extent that the diocese chose to adopt the means that the Act allowed. There was a plainly expressed desire, as appears from contemporary evidence, to maintain both the stability of the Church within Victoria and its integrity and communion with the Church abroad, in England and elsewhere. Consistently with this approach the Bill for the 1854 Act was promoted by Sir William Stawell in his private capacity, not as Attorney-General, not as a "religious" one, but as "merely a Bill to enable the Church to regulate its temporal affairs".

It would be a genuinely invidious task to attempt an exhaustive catalogue of the heads of legislative power that the 1854 Act conferred on diocesan synods. Fortunately, however, there is no present need to attempt that task. It is sufficient to say that in our opinion the Act is not directed towards conferring powers to legislate upon spiritual matters. In particular, we do not consider that section V is concerned to authorise legislation dealing with faith and doctrine." (pages 11 -13)

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21. The 1989 Determination also held that Section 51 of the Constitution did not grant diocesan synods legislative power:

"The Tribunal has reached the view that s 51 should not be interpreted as a general grant of legislative power to diocesan synods. The limiting words with which the section concludes argue against that construction. Section 51 simply spells out one of the implications in s 5 with respect to the distribution of powers within the Church under what might be called a "federal" scheme. It also makes it plain that diocesan legislation must conform with such overriding constraints as the Fundamental Declarations. The Tribunal can understand the view that s 51 provides the authority for a diocesan synod to legislate under s 30, say, or s 67 - that is, to make the essential complementary diocesan legislative responses that the Constitution in certain respects requires; in other words, to do what is necessary to make the constitution work, particularly with respect to the role of general synod. However the preferable view is that these incidental local legislative powers are necessarily implied already in those few constitutional provisions that require such an express diocesan response.

Accordingly there is no need to spell such a legislative grant out of s 51, and the embarrassment to the opposing interpretation that is provided by the final words of limitation in the section is thus avoided. At any rate, whatever the better view might be with respect to that relatively narrow question of essential complementary powers, s 51 is certainly not to be interpreted as a general authority for a diocesan synod to make ordinances for the order and good government of the Church within the diocese. The concluding words of the section are too strong for that. It follows that Melbourne can get no assistance in the present matter from s 51, and there is no relevant legislative grant in any other section of the Constitution." (pages 28 - 29)

22. The 1989 Determination concluded that:

"For the reasons expressed we are of the opinion that the 1854 Act cannot support the Act that is the subject of this reference...." (page 14)

and also that:

"Accordingly it follows that there is nothing in s 51 to empower the Synod of the Diocese of Melbourne to pass the subject Act." (page 29)

23. Tasmania submits that the reasoning of the 1989 Determination is valid and should be followed in the current References.

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24. Accordingly, Tasmania submits that the Synod of the Diocese of Wangaratta does not have power to legislate:

- (a) with respect to spiritual matters (generally); or
- (b) in any way contrary to Section 5 of the 1854 Act; namely to:

“alter or be at variance with the authorised standards of faith and doctrine of the United Church of England and Ireland or shall alter the oaths declarations and subscriptions now by law or canon required to be taken made and subscribed by persons to be consecrated ordained instituted or licensed within the said Church.”

25. Further, as no Victorian diocese has the power to legislate with respect to spiritual matters, no such diocese may unilaterally modify the authorised standards of faith and doctrine of the Church in Victoria. Tasmania submits that no such changes may be effected in Victoria without a change to the national Constitution or, within the constraints of Section 5 of the Constitution, a Canon of General Synod.

26. As regards the subject matter of the Wangaratta Regulations, Tasmania submits that:

- (a) no changes (as are relevant for the References) have been made to the authorised standards of faith and doctrine of the Church in Victoria since either the creation of the Diocese of Victoria or since the enactment of the 1854 Act; and
- (b) the Wangaratta Regulations are contrary to such authorised standards of faith and doctrine.

27. It follows necessarily that the Wangaratta Regulations are an invalid exercise of the powers of the Synod of the Diocese of Wangaratta.

The Synod of the Diocese of Wangaratta does not have power to make the Wangaratta Regulations under the Canon Concerning Services 1992

28. The Wangaratta Regulations purport to be made “pursuant to Section 5(2) of the Canon Concerning Services 1992.”

29. Section 5(2) of that Canon (in effect in the Diocese of Wangaratta) provides as follows:

“Subject to any regulation made from time to time by the Synod of a diocese, a minister of that diocese may on occasions for which no provision is made use forms of service considered suitable by the minister for those occasions.”

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30. The phrase "Subject to any regulation made from time to time by the Synod of a diocese" does not empower any diocese to pass regulations. Instead, the phrase is a restriction on the power granted to a minister of a diocese: that is, the minister may use a form of service except to the extent prevented from doing so by Diocesan regulation to the contrary.
31. The Canon does not elsewhere grant any diocese the power to enact regulations.
32. It follows necessarily that the Wangaratta Regulations are not validly made under any purported power to make regulations under the Canon. Hence, the Wangaratta Regulations are invalid.

The Wangaratta Regulations are inconsistent with the doctrine of the Church, the Fundamental Declarations and the Ruling Principles and contrary to Section 5 of the Constitution

33. Tasmania submits that the Wangaratta Regulations are inconsistent with the doctrine of the Church, the Fundamental Declarations and the Ruling Principles and contrary to Section 5 of the Constitution.
34. In this regard, Tasmania has had the opportunity to review the draft submissions of Ridley College and the Synod of the Diocese of Sydney. Tasmania adopts and supports such submissions in respect of this question, on the basis that the final submissions are substantially in accordance with the sighted drafts.

Conclusion

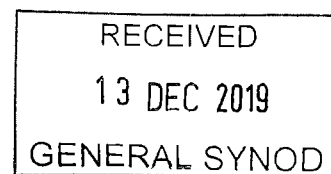
35. Tasmania thanks the Appellate Tribunal for the opportunity to make these submissions and welcomes the opportunity to clarify any aspects if that would be of assistance.

Dated: 13 December 2019

Alex Milner
Church Advocate

SUBMISSIONS FROM THE DIOCESE OF NEWCASTLE IN RELATION TO THE APPELLATE TRIBUNAL MATTER - *THE BLESSING OF PERSONS MARRIED ACCORDING TO THE MARRIAGE ACT 1961 REGULATIONS 2019 MADE BY THE SYNOD OF THE DIOCESE OF WANGARATTA*

13 December 2019



QUESTIONS

1. REFERENCE ONE – FROM THE PRIMATE

The Primate has submitted the following questions

- 1.1. Whether the Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019 (**Regulation**) made by the Synod of the Diocese of Wangaratta is consistent with the Fundamental Declarations and Ruling Principles in the Constitution of the Anglican Church of Australia.
- 1.2. Whether the regulation is validly made pursuant to the Canon Concerning Services 1992.

2. REFERENCE TWO – FROM 25 MEMBERS OF THE GENERAL SYNOD

The Primate has referred the following questions put by 25 members of the General Synod

- 2.1. 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.
- 2.2. 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.
- 2.3. Whether, in light of the determinations to be made in Questions 1 & 2, the Regulations are validly made pursuant to *the Canon Concerning Services 1992 (the Canon)*

SUBMISSIONS

- a) The Diocese of Newcastle (**Newcastle**) adopts the submissions of the Diocese of Wangaratta (**Wangaratta**).

- b) Newcastle notes that it is not the role of the Tribunal to express any position on the merits of any ordinance or canon whose validity is in question (*Reference on the Affiliated Churches Ordinance 2004 of the Diocese of Sydney*).
- c) Newcastle notes the determination of Young, Horton, Bleby, Mason, and Herft in *Reference on the Legality of the Administration of Holy Communion by Deacons or Lay Persons* by the Appellate Tribunal in August 2010. They stated that it is the responsibility of “the bishops and this [Appellate] Tribunal to see that the rules of the church are upheld. This is not just a matter of legalism, but a matter of fairness and protection of the ordinary members of the church.”
- d) Newcastle notes the unanimous determination of the Tribunal in *Appeal of Keith Francis Slater*. The members stated - “Jurisdictional error may occur when a body or tribunal embarks upon a proceeding or imposes a particular remedy or sanction without authority to do so.”
- e) Newcastle proposes that the Appellate Tribunal lacks jurisdiction to determine questions 1.1 and 2.1 – 2.3.
- f) The General Synod in adopting the Canon 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.
- g) The Canon does not make provision for the decision of the bishop of the diocese to be referred to the Appellate Tribunal.
- h) Newcastle submits that the Appellate Tribunal should decline to answer questions 1.1, 2.1 – 2.3 and instead refer the questions to the Bishop of Wangaratta.
- i) Newcastle makes no further submission relation to question 1.2.
- j) In order to assist the Tribunal, Newcastle advises that its Synod approved in principle a Bill for a regulation which is similar to the Regulation. It referred the Bill for further consideration to its Diocesan Council. The Diocesan Council has deferred further consideration of the Bill until the Appellate Tribunal makes its determination.
- k) The Bishop of Newcastle sought leave to make separate appearance on this reference but is not making any independent submission at this time.

IN THE APPELLATE TRIBUNAL

ANGLICAN CHURCH OF AUSTRALIA

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

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

SUBMISSIONS OF THE REVEREND ASSOCIATE PROFESSOR MATTHEW ANSTEY¹

1. The appropriateness of the questions referred

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

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

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

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

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

2. The Fundamental Declarations and Ruling Principles

- 2.1 On the assumption that the Appellate Tribunal decides that it has jurisdiction in the matter, then effectively the one question arises, possibly paraphrased as such: “*Whether the regulation Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019 made by the Synod of the Diocese of Wangaratta is inconsistent with the Fundamental Declarations and Ruling Principles in the Constitution of the Anglican Church of Australia*”.

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

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

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

3. The Fundamental Declarations

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

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

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

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

4. The Ruling Principles

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

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

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

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

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

⁵ As evidenced in the disagreements in EDC.

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

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

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

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

6. The Interpretation of Scripture and Same-sex Marriage

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

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

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

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

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

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

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

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

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

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

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

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

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

¹⁷ Smith, *ibid*, 56.

¹⁸ Smith, *ibid*, 53.

¹⁹ Smith, *ibid*, 56.

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

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

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

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

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

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

²¹ Smith, *ibid*.

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

²³ Thompson, *ibid*, 78.

²⁴ Thompson, *ibid*, 84.

²⁵ Thompson, *ibid*, 80.

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

²⁷ Barton, *ibid*, Conclusion.

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

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

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

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

³⁰ Kelsey, *ibid*, 458.

³¹ Kelsey, *ibid*, 461.

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

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

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

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

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

³⁵ See also my chapters in EDC.

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

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

³⁷ Via, *ibid*, 94.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7. Lived Experience and Same-sex Marriage

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

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

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

⁴⁸ Johnson, *ibid*, 46.

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

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

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

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

8. A Theological Defense of Same-sex Marriage⁵⁵

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

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

⁵⁰ Johnson, *ibid*, 50.

⁵¹ Johnson, *ibid*, 50.

⁵² Brownson, *ibid*, 11.

⁵³ Achtemeier, *ibid*, 3-4.

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

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

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

⁵⁶ Kelsey, *ibid*, 23.

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

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

8.9 Thus, when one ponders seriously and deeply the nature of the love same-sex couples have for one another, and when one sets aside all those counter arguments which appeal to fallen human nature (given that such counter arguments count equally against heterosexual marriage), the faithful enactment of such same-sex love must necessarily be deemed to be good, wholesome, and, indeed, Christ-like.

8.10 In sum, God revealed in Christ through the Spirit affirms same-sex marriage. As the Church in Wales Doctrine Commission report stated (in the section supporting same-sex marriage):

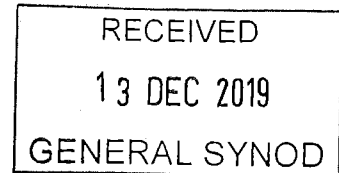
“A Christian understanding of marriage is not threatened by the inclusion of homosexuality; it is enriched by it. Blessing a marriage between a same-sex couple would not be a redefinition but a deepening of the Christian understanding of marriage, consistent with the path of its development through scripture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

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

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



13 December 2019



The Registrar
Appellate Tribunal
General Synod Office
Anglican Church of Australia
Suite 4 Level 5
189 Kent Street
SYDNEY NSW 2000

Attention: Mrs Anne Hywood
By email: appellatetribunal@anglican.org.au

Dear Anne

**Primate's Reference under Section 63 of the Constitution – Blessing of Persons Married
According to the Marriage Act 1961 Regulations 2019 (Wangaratta)**

As you know I act for the Archbishop of Perth The Most Reverend Kay Goldsworthy AO.

I attach for your attention Archbishop Goldsworthy's primary Submissions on this reference which I request you file with the Tribunal.

Would you please confirm receipt of the attached Submissions.

Yours sincerely

Eric Ross-Adjie
Chancellor

cc Susan Harvey
By email

IN THE APPELLATE TRIBUNAL

ANGLICAN CHURCH OF AUSTRALIA

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

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

SUBMISSIONS OF ARCHBISHOP KAY GOLDSWORTHY AO

1. Definitions

In this Submission the following terms shall have the following meanings:

“**ACA**” means the Anglican Church of Australia;

“**AAPB**” means *An Australian Prayer Book* 1978;

“**APBA**” means *A Prayer Book for Australia* 1995;

“**BCP**” means the Book of Common Prayer 1662;

“**Blessing Service**” means the service contained in Appendix A to the Regulations;

“**Canon Concerning Services**” means the Canon Concerning Services 1992;

“**Constitution**” means the Constitution of the ACA;

“**First Reference**” means the reference made by the Primate to the Appellate Tribunal on 5 September 2019;

“**Marriage Act**” means the *Marriage Act 1961 (Cth)*;

“**Regulations**” means the *Blessing of Persons Married According to the Marriage Act Regulations 2019* made by the Synod of the Diocese of Wangaratta pursuant to section 5(2) of the Canon Concerning Services;

“**Second Reference**” means the reference made by the Primate to the Appellate Tribunal on 21 October 2019; and

“**Wangaratta Submission**” means the primary submissions made by the Synod of the Diocese of Wangaratta dated 8 November 2019.

INTRODUCTION

2. Marriage is not necessarily a Christian ceremony. It preceded Christianity many centuries and is essentially a civil contract between two persons of whatever religious or non-religious adherence. The Christian church does not have any monopoly on the form of or qualification for marriage or as to who may perform a valid marriage ceremony. In Australia that is regulated by the Commonwealth Parliament in the *Marriage Act*.
3. Within that framework a church may regulate which of its members may perform a marriage ceremony, who is or is not qualified to be married in that church and the form of the marriage service to be used. The ACA has done this in the *Solemnisation of Matrimony Canon 1981*, the *Marriage of Divorced Persons Canon 1981*, the *Matrimony (Prohibited Relationships) Canon 1981* and in the various forms of service for the solemnisation of matrimony contained in the authorised prayer books. We understand that it is not the Appellate Tribunal's function on this reference to analyse and determine what those limitations are in this Church, although we agree with the Wangaratta Submission that a marriage may only be performed in this Church between a man and a woman (refer paragraphs 53 to 55). We also agree with the Wangaratta Submission as to the function of the Tribunal on this reference (paragraphs 11 to 20).
4. The Blessing Service is not and does not purport to be a form of marriage ceremony. The only forms of marriage service available for use in this Church are those contained in the BCP, AAPB and APBA. They all contain within those services a form of blessing by the Minister of the parties to the marriage in accordance with those respective rituals. The Blessing Service can have no relevance to such marriages, already blessed, and no bearing on them. It is only relevant to a marriage of the type which is not provided for in those rituals such as a Jewish marriage, a Muslim marriage, a marriage conducted by a civil celebrant and any other marriage recognized as such by the law of Australia. It is also beyond dispute that none of the authorised rituals of this Church make provision for the blessing of such marriages.
5. The form of blessing contained in the Blessing Service is similar to that contained in all of the marriage services authorised for use in this Church, namely a series of prayers for various applications seeking God's grace for the couple being blessed

culminating in an invocation for the blessing of the Holy Trinity upon them for their guidance and protection.

6. Moreover section 4 of the Regulations does not purport to authorise the use of the Blessing Service generally in the Diocese of Wangaratta but only “where a minister is asked to and agrees to conduct a Service of Blessing for persons married according to the *Marriage Act 1961*”, and that the Blessing Service may only be used in such a case.

THE FIRST REFERENCE

7. We submit that question 1 does not ask a constitutional question and should not be answered, but for the following different reasons than those contained in the Wangaratta Submission.
8. Firstly, the question itself is not one which “*arises under (the) Constitution*” under section 63(1). It is not in accordance with the Constitution to pose a question whether a regulation or ordinance of a diocesan Synod is “*consistent with the Fundamental Declarations and Ruling Principles in the Constitution*”. Section 4 of the Constitution contains four provisos to the authority conferred by that section.
9. The first one requires that all statements, forms, rules or alterations or revisions of the relevant formularies “*are **consistent with the Fundamental Declarations***”. The second proviso declares that the BCP and the Thirty-nine Articles are to be regarded as the authorised standard of worship and doctrine of the Church and that “*no alterations in or permitted variations from the services or Articles therein contained **shall contravene** any principle of doctrine or worship laid down in such standard*”. The relevant questions that can be asked are therefore whether a diocesan Regulation or Ordinance contains a statement, form, rule or alteration or revision of the relevant formularies and if so whether it is **consistent with the Fundamental Declarations** and/or whether it constitutes an alteration in or permitted variations from existing authorised services or the Articles and if so whether it **contravenes any principle of doctrine or worship** laid down in the standard. Those questions are different and cannot be rolled into one. To that extent we disagree with paragraph 23 of the Wangaratta Submission. (our emphasis)

10. This probably also means that the proponent of the legislation must justify its consistency with the Fundamental Declarations and that any opponent to the validity of the legislation must establish that it contravenes a relevant principle of doctrine or worship. However it is unnecessary for the Tribunal to rule on that issue.
11. What is significant is that the Regulations and Blessing Service may fall within the meaning of "forms" and "rules" referred to in the first proviso in section 4 of the Constitution and accordingly it is relevant to ask whether they are **consistent with** the Fundamental Declarations. However, they are neither an alteration in or permitted variation from the prescribed services or the Thirty-nine Articles. They provide for something that is not provided in any of them, and the second proviso in section 4 of the Constitution can have no application. Question 1 in the First Reference is therefore flawed and should not be answered by the Tribunal.
12. As there is no provision in the Constitution or in the existing formularies of the Church for the blessing of a couple other than in the course of an authorised marriage service of the Church it is necessary to look elsewhere for the authority to conduct such a blessing. That may be found in section 5(2) of the Canon Concerning Services. The validity of that Canon is not and cannot be called into question on this reference. That may only be done by way of reference under section 29 of the Constitution.
13. A service in the form of the Blessing Service may be used in the Diocese of Wangaratta without the authority of the Regulations. Section 5(2) of the Canon Concerning Services authorises the use of a form of such service if it is considered suitable by the Minister because no provision is made for such blessing by the authorised formularies. Subject to the qualifications expressed in that section the decision is that of the Minister. The reference in section 5(2) of that Canon to a regulation made by the Synod of the diocese is one of the qualifications on the exercise of that power. It is not the regulation which is required to authorise this exercise.
14. The Synod of the Diocese of Wangaratta has made such a regulation limiting the form of blessing which may be used by a Minister in that diocese to the form prescribed in the Regulation and regulating the circumstances in which it may or may not be used. The form of section 4 of the Regulations and the other

conditions prescribed in the Regulations for its use are entirely consistent with the approach required by section 5(2) of the Canon Concerning Services. This limiting regulation is clearly authorised by the Canon Concerning Services, and its validity or otherwise is not a question which arises under the Constitution. If any defect in the Regulations were alleged it may only arise as a question of inconsistency with the Canon Concerning Services as provided for in section 30 of the Constitution. However no such question arises in this reference.

15. The form of service to be used *"must be reverent and edifying and must not be contrary to or a departure from the doctrine of this Church"* (section 5(3) of the Canon Concerning Services). We agree with the Wangaratta Submission as to what constitutes the doctrine of this Church (refer paragraphs 28 to 52). However, subsection 5(4) of that Canon provides that a question concerning the observance of the provisions of subsection 5(3) may be determined by the Bishop of the diocese. The question whether a form of service used by a Minister is contrary to or a departure from the doctrine of the Church is not a question arising under the Constitution. It is a question arising under section 5 of the Canon Concerning Services concerning a practice adopted by a Minister. It is not a question that may be settled by the Appellate Tribunal under section 63 of the Constitution. Depending on what the Minister actually does it may be the subject of a disciplinary action in a diocesan tribunal and ultimately the subject of an appeal to the Appellate Tribunal, but that is quite a different proceeding from this reference.
16. Recognising this, the General Synod has authorised a process by which such a question may be resolved. In many respects the Constitution recognizes that diocesan bishops are to be the guardians of the doctrine of the Church, for an example refer to section 58 of the Constitution. Occasions when doctrinal questions will arise under section 5 of the Canon Concerning Services will be relatively rare. That is not surprising, given the limited operation that such a form of service will have, that any doctrinal question arising in its exercise should be able to be dealt with summarily by the diocesan Bishop, or perhaps as a necessary precondition to the bringing of any charge in the diocesan tribunal.
17. If we are wrong this is not a question that can be settled by the Appellate Tribunal. As an alternative submission, if a question of doctrine arises at all, the Tribunal should, in the exercise of its discretion, decline to answer the question and allow it to be resolved by the diocesan Bishop. In any event, a relevant question cannot

arise unless and until some action is taken by a Minister and a judgment may be made about his or her conduct. Otherwise the Appellate Tribunal would be asked to rule on a theoretical question which may never arise.

18. For these reasons we submit that question 1 of the First Reference should not be answered.
19. As the Regulation is no more than a limiting qualification on the exercise of the power conferred by section 5(2) of the Canon Concerning Services and because the question of its validity does not arise under the Constitution but under the Canon question 2 of the First Reference should also not be answered.

THE SECOND REFERENCE

20. The first question contained in the Second Reference should not be answered because it contains defects which are similar to, but not identical with, the first question in the First Reference. Also, for the reasons given above, it is not a question which arises under the Constitution, and for the reasons given in the Wangaratta Submission a question of doctrine does not arise.
21. The second question should not be answered for the same reasons. In addition, the Appellate Tribunal should not rule on an entirely theoretical question concerning some other unidentified form of service.
22. The third question should be answered as follows. Regardless of whether determinations are made in Questions 1 and 2 the Regulations are validly made pursuant to the Canon Concerning Services

THE DOCTRINE OF THIS CHURCH

23. We respectfully adopt paragraphs 53 to 71 of the Wangaratta Submission which provides as follows:

"The Church's teaching on marriage

53. *The Church's teaching on marriage is to be found in its forms of service for marriage, most particularly in the BCP, and in the three Canons of General Synod dealing with the question of matrimony. It can also be found in codes of conduct such as Faithfulness in Service which contain*

advice or directives about sex and intimacy within marriage. None of the 39 Articles deal [sic.] expressly with marriage.

54. *The BCP marriage service is expressly confined to marriage between a man and a woman. There is no authorised Anglican rite for any form of Christian marriage other than a marriage between a man and a woman. The General Synod, in exercising its powers under section 26 of the Constitution, has expressed the view that marriage is between a man and a woman.*
55. *There are 3 Canons of General Synod that relate to marriage.*
 - 55.1 *All three are confined to Christian marriage, that is to, marriages being solemnised using the rites and ceremonial of the Anglican church;*
 - 55.2 *All three deal with matters of discipline and ritual and do not contain any reference to faith. They relate to how and when the marriage rites of the church may be used, and to who may participate in those rites, including divorced persons.*
56. *Taken all together, and having regard to past statements of the Tribunal on the distinction between doctrine and other forms of Church teaching on matters of ritual, ceremonial and discipline, the Church's teaching on marriage does not have the status of doctrine as that term is defined in the Constitution. It is not referred to in the Fundamental Declarations. It is not the subject of any teaching in the 39 Articles. The BCP and the Canons of General Synod deal with the marriage as a rite of the Church and as matter relating to ceremonial and discipline. Codes of Conduct such as Faithfulness in Service deal with marriage as part of guidance about godly living and conduct.*
57. *An argument might be made that the BCP marriage service does expressly prohibit relationships other than Christian marriage because of the words in the service "so many as are coupled together otherwise than God's Word doth allow are not joined together by God; neither is their Matrimony lawful". The argument is that those words represent a statement which excludes any form of relationship other than Christian*

marriage between a man and a woman as being a relationship capable of sanctioned by God.

58. *This argument still requires consideration of whether any such prohibition, if it exists, represents the teaching of the Church on a question of faith rather than of ritual or ceremonial, or whether it merely reflects matters of tradition or secular law. It is important to consider the context in which the liturgies and formularies in the BCP were created. As was noted by Vice President Tadgell JA in the context of debate on whether women could be ordained to any of the orders of ministry :*

The social and constitutional milieu in which the Book of Common Prayer was produced required that its compilers proceed upon the footing that women were ineligible for ordination. No-one doubts that they were ineligible both by the common law and by the canon law, for by neither the common law from its commencement nor the Constitution of England was a woman entitled to exercise any public function ... What Lord Haldane in Viscountess Rhondda's Claim [1992] 2 AC 339, 387 called "the general disability which the law regarded as attaching to the exercise by women of public functions" cannot be supposed to have depended upon the canon law or any religious doctrine or religious principle, for it extended much beyond the Church in its application. Inasmuch as the common law exclusion of women overlapped the religious exclusion, I should be unwilling to ascribe to any position adopted or enshrined or embodied or laid down in the Ordinal the character of a principle of doctrine or worship unless there were other evidence to justify it being treated as such.¹

59. *Whether dealing (as this reference does not) with a form of service purporting to solemnise a marriage according to Christian rites, or whether (as here) with a form of blessing only, the Tribunal can adopt this reasoning with respect to the blessing of civil marriages, including*

¹ See Report of the Appellate Tribunal Opinion on the Ordination of Women to the Office of Deacon Canon 1985 4 March 1987: reasons of the Vice President at page 90

same sex marriages: to the extent that the BCP marriage rite provides for only marriages between men and women, that can be seen as reflecting the reality of the common law position and attitudes extending well beyond the Church rather than being derived from any doctrine. At the time the BCP was prepared, there was no possibility of same sex marriages, and no "civil marriage" in the sense of ceremonies conducted other than by priests. Just as the historical absence of women as clergy does not represent a doctrinal principle that women cannot be ordained, so too the historical absence of civilly conducted marriages or forms of rite for same sex marriages does not arise from a point of doctrine but from past social attitudes and legal constraints unrelated to, if overlapping with, the rituals and discipline of the Church.

60. *So too, the words "so many as are coupled together otherwise than God's word doth allow are not joined together by God" in the BCP marriage service must be seen in the context of their place in the service. That context is the section dealing whether there are any impediments at law to the marriage. The reference to "other than God's word doth allow" is a reference to circumstances in which marriage was prohibited by both civil and canon law – such as cases where one party was already married or where the parties stood in a prohibited relationship to each other.*
61. *Even if this teaching is construed as doctrine, it is still necessary to consider the implications of that doctrine for how the Church is to regard other forms of relationship, such as civil marriages. If the Church's position on marriage is one of faith and not of ritual, ceremonial or discipline, then by necessary implication it is a position confined to Anglicans. It is teaching governing the practice of the central tenets of the Anglican faith. It cannot then purport to cover the field with regard to civil law or be a universal statement about the morality of other kinds of relationships.*
62. *The Appellate Tribunal has previously found that a canon providing for the marriage of divorced persons, regardless of the cause of the breakdown of marriage, would not contravene either the Fundamental*

*Declarations or the Ruling Principles.*² This would indicate that the teaching of the Church on marriage as contained in the BCP, at least insofar as it relates to the principle of “to the exclusion of all others for life” is not the teaching of the Church on a question of faith and therefore not doctrine for the purposes of section 4 of the Constitution.

63. Accordingly the BCP marriage service does not speak to the question of whether persons in a civil marriage may be blessed by the Church. The marriage service does not reflect the Church’s teaching on what constitutes a Christian marriage but, even if that teaching is **doctrine** for the purposes of section 4 (which the Tribunal should find it is not) it does not represent a binding statement of whether persons in other kinds of relationship can be blessed or otherwise regarded as worthy of God’s favour.

Scripture

64. It can be readily acknowledged that there is a body of opinion that would consider the blessing of same sex civil marriages contrary to Holy Scripture, and therefore contrary to the faith of the Church as reflected in section 2 of the Fundamental Declaration, 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 phrases³, 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.

² *Opinion of the Appellate Tribunal on the Marriage of Divorced Persons and admission of women to Holy Orders* 8 February 1980.

³ A similar argument from certain texts was made in the context of the ordination of women and rejected in the light of biblical scholarship: see the reasons of the majority in *Opinion of the Appellate Tribunal on the Ordination of Women* August 1985

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.*

65.1 *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 which confronts the Tribunal.⁴*

65.2 *The existence of different biblical commentaries on disputed passages indicates that there are many different views on parts of Scripture.⁵*

65.3 *While the interpretation of Scripture does not change with every whim and win, the Tribunal ought not ignore 150 years of biblical critical scholarship and its results, nor 300 years scientific investigation and discovery.⁶*

65.4 *Differences of interpretation sometimes result from differences in detailed exegesis, sometimes from the application of differing hermeneutical principles. "While the Constitution binds the Church to holy scripture as the ultimate rule and standard of faith, and while the 39 Articles make important statements about the place of Holy Scripture in the Church, the Church has not bound itself to one particular set of principles in the interpretation of Scripture".⁷*

66. *Such texts as exist on the topic of marriage, sexual relationships and same sex relationships are the subject of profound and continuing debates amongst scholars and form the basis for widely diverging views*

⁴ Report of the Appellate Tribunal Opinion on the Ordination of Women to the Office of Deacon Canon 1985 4 March 1987: reasons of the Vice President at page 80-81,

⁵ Report of the Appellate Tribunal Opinion on the Ordination of Women to the Office of Deacon Canon 1985 4 March 1987: reasons of Mr Justice Young at page 98 where His Honour notes there are "as many different views on parts of Scripture as there are views about the meaning of section 92 of the Australian Constitution",

⁶ Report of the Appellate Tribunal Opinion on the Ordination of Women to the Office of Deacon Canon 1985 4 March 1987: reasons of the Bishop of Newcastle at page 69,

⁷ Report of the Appellate Tribunal Opinion on the Ordination of Women to the Office of Deacon Canon 1985 4 March 1987: reasons of the Archbishop of Adelaide at page 43.

amongst Anglican clergy and laity. The Tribunal is not equipped to resolve that debate. Indeed, the very existence of that debate is itself evidence that questions of marriage and personal relationships are questions which are not questions about the faith as contained in the Fundamental Declarations. They are matters about which faithful Anglican people of good conscience can differ. They are not of the same order as matters relating to the faith of the Church as held from ancient times. Strong views may be held on either side of the debate without either side ceasing to uphold that Christian faith as it is reflected in the Creeds and in the 39 Articles and BCP. This is amply evidenced by the variety of arguments and views expressed in the Doctrine Commission's essays in Marriage, Same Sex Marriage and the Anglican Church of Australia, as well as in the contents of debates within and between dioceses and other church organisations.

67. *Accordingly, any argument about the content of the Church's teaching which is based on disputed interpretations of Scripture cannot meet the definition of doctrine under the Constitution. Anglicans are able to hold divergent views on many matters and still be Anglicans. Individual consciences may regard the teachings of the Scripture as leading to differing conclusions on matters of personal behaviours and morality. The fact that those different views are faith-informed and held with great sincerity cannot convert matters of ritual or discipline or moral or social welfare⁸ into matters of doctrine.*

Blessings

68. *As set out in the attached essay from Revd Canon Professor Dorothy Lee, blessings are at the heart of the common life of Anglicans.*
69. *The Regulations adopt a form of service for blessing people who have been married in a civil ceremony. There is no doctrine contained in the 39 Articles that limit the circumstances in which a blessing may be given to a person. The prayers upon diverse occasions in the BCP and other authorised prayer books do not purport to cover the field such that*

⁸ Section 26 of the Constitution empowers the General synod to declare its view on many matters including matters of spiritual, moral and social welfare. Resolutions from General Synod made in exercise of that power are not doctrine.

blessings or prayers in other contexts are not permitted. While not all Anglican traditions favour the use of blessings to the same extent, there are well established practices in many parts of the Church which bless people, pets, meetings, building and personal endeavours.

70. *Accordingly, nothing in the doctrine of the Church prevents the offering of a blessing to persons who seek that blessing in the context of their having been party to a civil marriage.*

Conclusion

71. *The result of this analysis is that*

71.1 *The Church's teaching on marriage is not doctrine;*

71.2 *If it is, it is confined in its scope to what constitutes a Christian marriage, and not to whether people in other kinds of relationships are worthy of God's blessing;*

71.3 *In either case, the Regulations and the form of service they adopt are not contrary to or a departure from doctrine; and*

71.4 *Accordingly, they are validly made under the Canon Concerning Services."*

24. Neither the practice of blessing a lawful marriage other than that occurring in the course of a marriage within this Church nor its regulation by diocesan Ordinance affect in any way a marriage service conducted in accordance with any of the forms authorised for use in this Church. Those authorised marriage services are also silent about the blessing of a marriage conducted outside this Church. There is therefore no relevant principle of doctrine or worship contained in the BCP or the Thirty-nine Articles which such a form of service would contravene.
25. The Blessing Service or its use does not qualify in any way any expression of the doctrine of this Church which may be contained in the BCP. The service merely fills a vacuum left by the several authorised marriage services. Accordingly it does not "*contravene any principle of doctrine or worship laid down in*" "*any authorised standard of worship and doctrine in this Church*" (section 4 of the Constitution).

26. The Blessing Service is not, nor does it purport to be, a marriage service. Therefore it has no impact on this Church's doctrine of marriage. It does no more than bless a legally constituted relationship. There is no doctrine of the Church which prevents two persons of the same gender from living together in a loving and respectful relationship which they promise to maintain so long as they both shall live. In the same way that the Church does not purport to be the ship builder when God's blessing is sought for a ship "and all who sail in her". The act of blessing in this service is no different, for example from the blessing of a ship "*and all those who sail in her*", but this Church never purports to build ships. The Church asks God to bless what already exists at/under law. The Blessing Service is the blessing of a class of people or people defined by a lawful relationship. This blessing does not purport to bless every act or omission, whether lawful, unlawful, sinful or otherwise conducted or permitted by a person in that relationship any more than the blessing of a marriage in an authorised marriage service does.
27. If the Blessing Service were to be condemned because of the possibility of a sin being committed within the relationship it would be quite wrong to allow any form of blessing in a marriage service. If the concern is the blessing of a same-sex marriage lawfully carried out in this or any other 'civil' jurisdiction, the blessing is only that of persons in a loving relationship, not what may or may not be conducted within it. The blessing is not of a contract but only of the persons who are parties to that contract living in a covenanted loving relationship. The blessing is not of what may, or may not be, conducted in the relationship. It is not necessary for this submission or the Tribunal to make any judgement about that, just as it is not necessary for the Church or its ministers, in blessing (any) couple in an authorised Anglican marriage service, to make any assumption or judgement as to whether the couple will in the future reject each other in violent, adulterous or hateful circumstances. Indeed any loving relationship can only be enhanced by the blessing and guidance of the Holy Spirit implicit in such a service.

Theological Reflections on a Blessing

28. What follows below refers chiefly to the theological issues raised by the Primate's reference to the Appellate Tribunal. Thus, notwithstanding the thrust of the submission above that the Blessing Service does not contravene any principle of doctrine or worship, and, further, that, according to section 5 of the Canon Concerning Services, any doctrinal question arising in its exercise should be able

to be dealt with summarily by the diocesan Bishop. This is offered to assist the Tribunal should it choose to consider the question of doctrine and worship, which as we submit above it does not need to. Its sole focus is the related issue raised by questions 1 and 2 - whether the Blessing Service "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."

A. Introduction

29. *Prima facie*, the proposed order of Blessing (Appendix A) is consistent with, at least, the Fundamental Declarations and Ruling Principles in the Constitution. The Fundamental Declarations refer to 'the Christian Faith as professed by the Church from primitive times and in particular as set forth in the creeds known as the Nicene Creed and the Apostles Creed.' (section 1 of the Constitution.) Neither of these creeds makes any reference to marriage, let alone to blessing of persons living in a legally binding marriage.
30. The Fundamental Declarations affirm that 'the canonical scriptures of the Old and New Testaments are the ultimate rule and standard of faith... containing all things necessary for salvation.' (section 2). Paragraphs 35 to 50 below will submit that the proposed order of Blessing is consistent with the standard of faith in the canonical scriptures of the Old (paragraphs 35–41) and New Testaments (paragraphs 42–50).
31. The Ruling Principles affirm that the ACA 'retains and approves the doctrine and principles of the Church of England embodied in the Book of Common Prayer... and in the Articles of Religion sometimes called the Thirty-nine Articles' (section 4). Like the Creeds, the Articles of Religion make no mention of any doctrine of marriage, nor blessing. Paragraphs 51 to 81 below will submit that the proposed order of Blessing is consistent with doctrine as embodied in the BCP.
32. It seems helpful to start these theological reflections with a concise definition of blessing, which one standard reference book defines as 'the authoritative pronouncement of God's favour.'⁹ Significantly, that same reference continues that

⁹ *The Oxford Dictionary of the Christian Church*, ed. F. L. Cross, (3rd ed., ed. E. A. Livingstone), (Oxford: OUP, 1997), p. 215

'instances in the Old Testament [OT]... presuppose the automatic action of blessing, independent of moral considerations.'¹⁰

33. Another helpful insight into 'blessing' is found in the work of Anglican theologians Daniel W. Hardy and David F. Ford. They argue:

"Blessing is the comprehensive praise and thanks that returns all reality to God and so lets all be taken up into the spiral of mutual appreciation and delight which is the fulfilment of creation."¹¹

This definition of blessing allows for a wide understanding of blessing – and who, or what, may be blessed. With those preliminary remarks, we turn to a more systematic exploration of 'blessing' in the canonical scriptures, the BCP and theological reflection on these.

B. Blessing in the Old Testament

34. In the Old Testament (OT) the source of all blessing is God (e.g. Gen 1:22,28; 9:1; 12:1-3; 26:3). Even where a father blesses his children (e.g. Gen 27:27-29; 31:55) this is implicit, as it was simply taken for granted in the ancient Near East and for ancient Israel that it was divine providence that operated in the natural world and history. Some texts refer to people blessing God: this is an act of praise and homage to God and God's gracious providence (e.g. Ps 34:1; 63:3-4; Dan 4:34; 1 Chronicles 29:10).
35. Within the cult or liturgy (the setting most pertinent to the current question of blessing people married in places other than the church), when the king or priest pronounced a blessing he invoked the name of YHWH (e.g. 1 Kings 8:14-21, 56ff) or invited YHWH to bless the people (e.g. Num 6:22-27; Ps 134:3). It was YHWH who blessed the people; the source of blessing was not ultimately the king or priest. It was YHWH's choice to bless the people or not. Nowhere in the Old Testament does God bless a 'contract' (see paragraphs 36, 49 and 63 below); always in these liturgical settings it is *people* who are given God's blessing through the king/priest inviting God's blessing on them.
36. Even in the institution of a covenant relationship between God and a person (e.g. Abraham) or a people (the people of Israel), which *may* be read as establishing a

¹⁰ *Loc. cit.*

¹¹ David F. Ford and Daniel W. Hardy, *Living in Praise: Worshipping and Knowing God* (London: D.L.T., 2005; first published in 1984 as *Jubilate: Theology in Praise*), p. 103

form of contractual relationship, the blessing is from God to those persons or people; not on the covenant itself. Furthermore, this is seen as 'overflowing' from the person originally blessed to others: e.g. 'I will bless you... so that you will be a blessing. I will bless those who bless you... and in you all the families of the earth shall be blessed.' (Gen. 12:2,3)

37. The Old Testament is inconsistent regarding whether those who are blessed deserve it or not. God blesses all the birds and sea creatures, and all of humankind, in Gen 1:22,28, and Noah and his sons in Gen 9:1,7. Is this deserved or not? It is ambiguous. It could be argued, alternatively, that in Gen 1, since all of creation including the creatures and humans are pronounced by God to be good, it is deserved, although humans and creatures alike have not done anything themselves to deserve it. However, in Gen 9:1,7, after the flood, although Noah is righteous (Gen 6:9) it is not clear that his sons are, and given the second creation that has violence built into it, the violence of humans towards animals and the warning against murder (9:2-6), the blessing as deserved does not seem to be a consideration. Most strikingly, in the instance of Balaam (Num. 23 ff), the blessing on Israel is independent of moral considerations: the blessing flows from the liberty of God.
38. There are conditional blessings and these occur in the covenant context, namely in Deut 28:1-14 and Lev 26:3-13, where the blessings listed reward faithful observance of the covenant's terms in counterbalance to the curses on those who disobey the covenant laws in Deut 28:15-68 and Lev 26:14-33 respectively.
39. Within cultic and liturgical contexts, as described above, it is the people in general that are blessed by the king or priest without any reference to being deserved, and indeed the context of 1 Kings 8: 14-21, 56ff, Solomon's prayer for the people in light of various sins, suggests the blessing is undeserved. There is no screening as to who among the people should be blessed and who not – the blessing is unconditional.
40. In summary, God is the source of all blessing. Leaders (king/priests) invite God's blessing, and in liturgical contexts this is on the people in general with no distinction between the deserving and undeserving.

41. This suggests that, as regards people who have been married other than in a church, a 'blessing' of this marriage in the context of liturgy not only does not go against the Old Testament regarding liturgical blessing, but that the decision to bless or not is not the judgment call of the priest – it is God's decision. The priest or other authorised minister can invite God's blessing and it is up to God to bless or not – it is out of our hands and for us or any priest to make a judgment call on this and refuse a blessing is overstepping human limits thereby usurping God as the final decision maker and source of blessing.

C. Blessing in the New Testament

42. The New Testament (NT) takes over much of the OT usage of 'blessing', with the odd development. As in the OT, a blessing typically refers to a bestowal of benefits and is the counterpoint to a "curse". Bestowed benefits include vitality, health, longevity, fertility, land, prosperity, honour, and progeny. Curse results in death, illness, childlessness, famine, and war.
43. An important feature in the NT understanding of blessing is the distinctive joy which comes through participation in the kingdom of God. Blessings such as those found in the beatitudes (Matt 5:3-12, and parallel Luke 6:20-26) express a vision of life in the kingdom and reveal divine favour for certain human actions and situations. Recipients are "fortunate" or "happy" in the sense that they are the privileged recipients of divine favour through God's imminent reign. Jesus suggests that those who recognize the message of the kingdom will be blessed (Matt 13:16).
44. As in the OT, God is the primary source of blessing. In the NT, God is repeatedly referred to as the blessed one (Luke 1:68; Romans 1:25; 2 Corinthians 1:3; 11:31; Ephesians 1:3; 1 Peter 1:3; 1 Tim 1:11; cf. Mark 14:61). The mother of the Messiah is also "blessed among women" and the fruit of her womb (Jesus) is "blessed" (Luke 1:28, 42).
45. Inviting God's blessing upon persons legally married outside the church, including those in same-sex relationships, is not inconsistent with the principles of Scripture. It is customary through the NT to invite God's involvement in every aspect of political, familial, social, and economic life. During his ministry, Jesus never blesses marriages or relationships, but he adopts the religious practices of his day to pronounce blessing over food (Mark 6:41; Mark 14:22) and people such as

children (Mark 10:16), the apostle Peter (Matt 16:17), and the disciples at the ascension (Luke 24:50).

46. When we pray, we do as Jesus taught us, by inviting God's kingdom and God's will to be done on earth as in heaven. Ultimately, it is up to God whether a blessing takes effect. Human approval or sanction is not a necessary precondition to receiving God's blessing. In fact, *blessing often falls upon those we least expect*. For example, Jesus radically instructs his disciples to "Bless those who curse you" (Matthew 5:44//Luke 6:28), and this teaching is echoed in Paul's admonition to the Roman assembly: "Bless those who persecute you" (Rom 12:14; cf. 1 Cor 4:12). Similarly, the author of 1 Peter advises his recipients, themselves victims of suffering, not to "repay evil for evil or abuse for abuse" but, on the contrary, to "repay with a blessing" (1 Peter 3:9).
47. This surprising and counter-cultural motif is demonstrated most acutely in the beatitudes spoken by Jesus at the beginning of his Sermon on the Mount (Matt 5:3-12). Here a significant and unexpected reversal takes place wherein the "blessed" or "fortunate" are those who conventionally would be regarded as "unfortunate" or "cursed" by first century Jews and Gentiles. Blessedness is reserved not for the rich and secure, but for the poor, the mourning, the meek, and the persecuted. In the prevailing Græco-Roman society, by contrast, to be "blessed" refers almost exclusively to the freedom of the wealthy from normal cares and worries. Luke's version of the beatitudes alternates blessings—including for the hungry and the hated, excluded, and reviled—with several "woes" against the rich and satisfied, which further cements the promise that the earthly status of those addressed will be reversed in the kingdom (Luke 6:20-26). When Jesus declares the poor and persecuted blessed, this does not mean that God *approves* of poverty or persecution, but simply that God is present and at work within their respective situations. Blessing assures the addressees of the vindication and reward that attends God's salvation, and thus provides encouragement in their current predicament, and an opportunity for reconciliation to God.
48. The surprising theme of God's blessing falling upon the unexpected is rooted in the notion that Jesus himself was "cursed" when he was crucified by the Romans (Gal 3:13; cf. Deut 21:23), and that through his humiliating death on a cross, the world is being saved and reconciled to God. Such counter-intuitive logic, at odds with the prevailing logic of the wider Græco-Roman world in which "the mere mention of the

word 'cross' is shameful to a Roman citizen and a free man" (Cicero, *Pro Rabirio* 5.16), is what led Paul to exhort the radical message of Christ crucified as God's "foolishness" that completely confounds the conventional wisdom of this world and the current age (1 Cor 1:18-25).

49. Thus, the blessing of persons who have been married in a civil ceremony is consistent with Scripture, so long as it is understood that it is not the union itself which is being blessed, but rather the persons involved, who come before God, in the context of liturgical worship, to seek blessing upon their life together.

D. Liturgical blessing in BCP (and AAPB and APBA)

50. The BCP is the standard for doctrine for the ACA referred to in the Constitution. Nevertheless, BCP is not a *limiting* standard for doctrine, but rather has been an enabling standard for Anglicans over centuries. Indeed, ***the BCP's silences and its historically-conditioned expressions of prayer have not prevented the Anglican Church of Australia from providing other pastoral services and resources which have become valuable in 20th and 21st century evangelistic and pastoral contexts***, not least in AAPB and APBA. Some examples are given below.

51. Example 1: Childbirth

The BCP form for the *Thanksgiving of Women after Childbirth, Commonly Called Churching of Women* has a historically understandable emphasis on the preservation of the life of the woman through childbirth. It has no reference to the child (which may have died), to the father of the child, or to other family members. The emphasis on the woman's survival is preserved in *Thanksgiving for a Child* in APBA in a single prayer, while the rest of the APBA form is rich in prayers for all concerned in the child's birth, family life and growth in faith.

52. Example 2: Ordination

The BCP forms for ordaining deacons, priests and bishops assume male gender and use only male pronouns for all those who are ordained. This is entirely understandable in the historical context of the BCP. It has not prevented the ACA from legislating to allow women to be ordained as deacons, priests and bishops, or from providing in APBA liturgical forms for ordination in which pronouns used may be masculine, feminine or plural, depending on the candidates' gender.

53. Example 3: Ministry with the Sick

The service of Visitation of the Sick in the BCP is strongly focussed on the possible death of the person who is ill, and on a sensitivity to sin and its consequences. This emphasis is greatly reduced in APBA's Ministry with the Sick, where prayers for healing emphasise and recognise God as companion, strengthener and healer, rather than the likely source of the illness. These pastorally and theologically necessary developments include the separation of Ministry with the Sick and Ministry with the Dying into two separate orders in APBA. The shift also speaks into an evolving understanding of Scripture and blessing in the ancient world.

54. Example 4: Marriage

The BCP provides only a form for marriage in the parish church of a man and a woman. This is entirely understandable in the historical context of the BCP.

The BCP does already recognise and provide for two kinds of marriage, however: a marriage with, and a marriage without procreative possibility. When the woman is over child-bearing age, a rubric requires the priest to omit the prayer which asks God to "assist [the woman] with thy blessing" in order that she may bear children.

55. These silences of the BCP have not prevented the ACA from providing prayers and pastoral resources related to marriage that touch on contexts unknown to or not felt as needed in the world of the BCP, including prayers for existing families, prayers for healing after hurt, and forms for recognising and blessing marriages conducted elsewhere than in the parish church.
56. The BCP does not provide for a marriage where the woman and the man are social, economic or political equals. The gender-asymmetrical marriage vows of the BCP demonstrate this, where the man, on giving the ring, endows his wife with his possessions, and the woman, in her vow, promises to obey her husband.
57. This BCP asymmetry has not prevented the ACA from providing, in AAPB and APBA, marriage services which have entirely symmetrical marriage vows for the man and the woman.

58. The Wangaratta provision may therefore be seen as making a pastoral provision for prayer in an area where the BCP is silent, and where what the BCP does say is not sufficiently pastorally and theologically developed as to advance the mission of the Church in the 21st century, when fewer and fewer marriages are solemnised in the parish church.
59. It fits the definition of section 5(2) of the *Canon Concerning Services*, which specifies that, “subject to any regulation made from time to time by a Synod of a Diocese, a minister of that diocese may on occasions for which no provision is made use forms of service considered suitable by the minister for those occasions.”

It is not “contrary to or a departure from the doctrine of this Church” (section 5 (3)) but rather, like the examples given above, a supplement to and a development of the doctrine of this Church.

60. Furthermore, the BCP provides for diverse forms of blessing, which are used as models for developing further occasions of prayer for and declaration of God’s blessing. The grammar of liturgical texts in the BCP (and thus in AAPB and APBA) varies in the way blessing is prayed for, given thanks for, and declared. “Bless” as a verb occurs in indicative, imperative and subjunctive moods. “Blessing” and “benediction” as nouns are used. The wide range of expressions for blessing in the Bible is also reflected in Anglican liturgical texts.
61. (a) *Berakah-form blessing – prayers that bless God.*

“Blessed are you, Lord God of all creation; through your goodness we have these gifts to share.” “Bless the Lord, O my soul, and let all that is within me bless God’s holy name.” This form is related to praise and thanksgiving, and is familiar from the Hebrew scriptures. In it, the person or assembly praying acknowledges blessing received from God and reflects that blessing back from an overflowing heart. It can be prayed by any Christian at any time.

(b) *Thanksgiving for blessing received*

The General Thanksgiving has us pray: "We bless thee for our creation, preservation, and all the blessings of this life". This form both blesses God, and constitutes a heartfelt thanksgiving for blessing received from God.

In APBA, in the service of Thanksgiving for a Child, we pray: "thank you for blessing *names* with the gift of a *son/daughter*". This names a specific blessing received.

All Christians at any time can give thanks for blessings God has given them.

(c) *Petition or intercessory blessing - People*

The most common form of blessing in BCP and subsequent Anglican prayer is a direct request to God to bless persons or, very occasionally, things. In the Great Litany we pray "that it may please thee to bless and keep all thy people." Many formal and informal prayers ask God to bless particular persons, usually but not always with a particular purpose or outcome in mind. The form is then "Send your blessing upon/ bless these persons, *so that....*" The desired outcome, attitude or behaviour is carefully specified. For example, in the marriage service, the couple are prayed for in these terms: "bless these thy servants, and sow the seed of eternal life in their hearts; that whatsoever in thy holy Word they shall profitably learn, they may in deed fulfil the same."

(d) *Petition or intercessory blessing - Things*

Classical Anglican formularies are very circumspect in the things, as distinct from the persons, that are blessed. However, some significant things remain appropriate or indeed necessary subjects for the bishop's or priest's blessing.

62. In the BCP Baptism service, the priest prays over the water: "sanctify this water to the mystical washing away of sin". The blessing is to have a specified effect.

In the Lord's Supper, in the Great Thanksgiving, the prayer in BCP is called the Prayer of Consecration, and the rubrics refer to the consecration of the wine and the blessing of the bread. The petition associated with the "blessing" of the bread

and wine is “that we, receiving these thy creatures of bread and wine... may be partakers of his most blessed body and blood.”

63. Similarly, in the text of APBA's Great Thanksgivings, the priest's words of consecration/blessing over the bread and wine express the purpose of the blessing or consecration: “we pray that by your Word and Holy Spirit, we... may be partakers of Christ's body and blood”.
64. The blessing of the wedding rings, in APBA's Marriage Service, also takes the form of a petition with a purpose: “By your blessing, let these rings be for *N* and *N* a symbol of their love and faithfulness”.
65. Beyond these Prayer Book formulations for blessing water for baptism, bread and wine at Holy Communion, and rings at the wedding. Liturgies of the ACA predominantly thank God for things and bless the people who will use them.
66. *Declarative blessing of persons*

One of the distinguishing features of this kind of blessing is that it addresses not God (as the previous kinds of blessing do) but the people to be blessed. Instead of “[you, God,] bless us / them”, the syntax is “God bless you [the people seeking the blessing].”

67. The declarative form of blessing results from the basic conviction that God is the source of all blessing and is a God of abundance who delights in all kinds of flourishing. It will always be up to God what shape, if any, the blessing will take. The role of the priest or bishop in this kind of blessing is not to preach it, filter, focus or quantify it, but simply to declare it.
68. The sign of the cross, often accompanying the words of a declarative blessing, is a visual acknowledgement of the cost to God in Christ of delivering every good gift of mercy, peace, love and wholeness for those who receive the blessing. The Trinitarian formula is strongly associated with declarative blessing.
69. *Blessing the assembly*

Blessing is frequently declared by the bishop or priest in Anglican assemblies, in a grammatically distinct form which uses the subjunctive. “The peace of God which passes all understanding keep your hearts and minds in the knowledge and love of

God, and of his Son, Jesus Christ our Lord; and the blessing of God almighty, the Father, the Son and the Holy Spirit, be among you and remain with you always.” The subjunctive is recognisable in the verb forms *keep... be... remain* which would in the more common, indicative form be *keeps... is... remains...* This blessing both prays for and accomplishes what it describes. It is offered to the whole assembly, without conditions or exclusions. It assumes that God desires to bless, and does bless those present.

70. *Blessing a married couple*

There are few examples in the BCP or APBA of declarative blessing of specific individuals rather than the assembly.

One is in the BCP Marriage service. The priest declares this blessing: “God the Father, God the Son, God the Holy Ghost, bless, preserve, and keep you; the Lord mercifully with his favour look upon you; and so fill you with all spiritual benediction and grace, that ye may so live together in this life, that in the world to come ye may have life everlasting. Amen.”

71. To a rich declaration of blessing (with the verbs in the subjunctive: bless, preserve, keep, look with favour, fill...) it adds a “so that” prayer for the couple. This combines the declarative element of the blessing form with the petitionary element of the hoped-for result of God’s blessing.
72. There are no conditions or exclusions associated with this blessing, but only the hope of a grace-filled life on earth and everlasting life in the world to come. The declarative and the petitionary element of this blessing could equally be prayed for any Christian people living under one roof or forming an intentional community: parents and children, sisters and brothers, friends or house-sharers, adoptive, foster, step or blood families, vowed members of a religious community, and so on.
73. In APBA, the two Orders for marriage also contain rich words of declarative blessing for the married couple. When couples married under the Marriage Act elsewhere than in the parish church request a “blessing” for their married life, it is safe to assume that they are asking for a declarative form of blessing. It should be noted that the blessing in the marriage service in BCP and APBA *follows* the declaration of the marriage. The declarative blessing cannot be construed as *creating* the marriage. Before the blessing is spoken, the minister has already

explicitly declared that the marriage has now been constituted by the consents, vows, giving and receiving of a ring, and the joining of hands.

74. *Blessing in the Wangaratta regulations*

The Blessing Service provided begins with the minister announcing that “we have come together to pray for God’s blessing on *N* and *N* as they continue their married life together.” Various thanksgivings and petitions follow.

The form of service ends with a prayer addressed to the Holy Spirit, which in turn concludes with a declarative blessing based on the familiar form, with an associated petition: God’s blessing be upon you “to guide and protect you and all those you love.”

- 75. This blessing would be more felicitously expressed by separating into two distinct sentences the prayer to the Spirit and the declarative blessing, as these are addressed to different “audiences,” with the pronoun “you” having one reference in the prayer to the Spirit and another reference in the declarative blessing.
- 76. The rubrics recommend locating this form of service within a larger liturgical celebration, which would itself conclude with one of the forms of blessing for the whole assembly, described above.
- 77. The form of service clearly indicates that it relates to a marriage already solemnised elsewhere. That is, that it does not constitute the marriage.

E. Theology of Blessing

- 78. As seen above with specific reference to the ACA, the Christian church has always seen the Triune God it worships as the source and bestower of all blessing. In this, it follows the patterns of the people of Israel as seen in the OT. When the people of God – either the people of Israel or the Church – bless, they are always invoking or praying for *God’s* blessing, or (occasionally) recognising the blessing God has already bestowed on people or situations.
- 79. As stated above, the significant development seen in New Testament texts is a radical revision of what is identified as ‘blessed’. In the Beatitudes (whether the Matthean or Lukan versions), what is usually seen as ‘cursed’ is pronounced by Jesus to be ‘blessed’. Similarly, in terms of cultic foods – seen by the people of Israel to be cursed and unclean – it is revealed to Peter, in the context of his

(limited) mission to the Gentiles, that even such food can be made clean (or, in terms of cultic food practices, blessed) by God (Acts 10: 11–16).

80. A particular instance of this comes in Paul's instructions to the Church in Corinth. The cultic rituals of the Old Testament make clear that 'blood' is not to be consumed, as this makes a person or people impure: 'Only be sure that you do not eat the blood; for the blood is the life, and you shall not eat the life with the meat...' (Deuteronomy 12:23 ff.). Nevertheless, in his teaching about the eucharist/Lord's Supper Paul writes that 'the cup of *blessing* that we *bless*, is it not a *sharing* in the *blood* of Christ?' (I Corinthians 10:16). Of particular importance, this verse comes in the context of Paul's reflection on pagan sacrifices, and the use of blood in pagan cultic practices.
81. In other words, in what is already, by Paul's time, the chief rite of worship in Christian communities, the drinking of 'blood' (however figuratively that is understood, c.f. I Corinthians 11: 25) is, in the light of the offering of the crucified but risen Christ, transformed into a source of blessing – indeed, his blood is 'the cup of blessing.'
82. Unsurprisingly, the 'reversal', attested in the Beatitudes, is made most complete, as has been stated above (paragraph 48), according to Paul, in the fact that the one who ought to be seen as cursed, because he has been hanged on a tree (c.f. Galatians 3:13, c.f. Deuteronomy 21:23), is, in fact, the one whom God has raised to God's right hand and declared to be righteous and blessed. As the seer in Revelation will see:

*"Worthy is the Lamb that was slaughtered
to receive power and wealth and wisdom and might
and honour and glory and **blessing**."*

(Revelation 5:12)

83. Furthermore, this 'blessing' is the blessing that is shared with the 'one seated on the throne':

*"To the one seated on the throne and to the Lamb
be blessing and honour and glory and might
forever and ever!"*

(Revelation 5:13)

84. The references here to Revelation – that vision of the heavenly kingdom – are important. Any pronouncing of 'blessing' is an attempt by the Church, in faith and

trusting in the grace of God, to witness to God's in-breaking, eschatological kingdom. That is, when the Church invokes, prays for or pronounces (in faith and hope and with love) *God's* blessing on people or events, it does so in the faith and hope that these people or events are, and will continue to be, a sign of God's eschatological *basileia* (rule or kingdom) – where peace, mercy, grace and blessing abound – for the community of God in this present age.

85. In other words, blessing is a sign of the faith of the Church: recognising the dawning, in the 'not yet' of the present, of the 'already' of God's eschatological reign. By pronouncing blessing on people or an event, the Church recognises, in faith, that in some way, what we as yet perceive only by faith and in hope, ('dimly' or 'only in part', c.f. I Cor. 13:12) in this event or among these people – that is, God's future *basileia* of peace, justice and reconciliation between God and creation -has become present here and now.
86. To extend this reflection, a further insight into 'blessing' from Ford and Hardy (see above, paragraph 33) is helpful. They describe blessing as 'the powerful yet respectful interaction between God and the world.'¹² It is possible to read 'powerful yet respectful interaction between God and the world' as, again, a foretaste of that eschatological reconciliation that, the Church affirms, God has already accomplished in Christ (c.f. Colossians 1:20).
87. Ford and Hardy continue, however:

*"being blessed a person, animal, plant, situation or thing is affirmed by God in the way most appropriate to its **nature and future**. There is no manipulation, but a combination of discernment and active enabling.... There is in blessing a logic of the overflow ... characterising the mutual freedom of love between God and creation. Blessing is supremely a non-necessity, a gracious bestowal of something new."*¹³ (our emphasis)

88. The important element here is that 'being blessed a person... [or] situation... is affirmed by God in the way most appropriate to its [or his or her] *nature and future*.' That is, blessing is poured out by God as a sign of the future kingdom of God, even if human beings do not currently recognise such people or things as being blessed.
89. This 'expansion' is seen in Peter's roof-top experience (Acts 10), as well as in Paul's constant argument that circumcision, a sign of God's covenant relationship,

¹² *Living in Praise*, op. cit., p. 102.

¹³ *Ibid.*, p. 103.

was no longer the prerequisite clear marker of God's blessing on the chosen people (at least for males). As argued above, it reaches its zenith when the One who is hanged upon a tree is revealed, not as cursed, but as the source of all blessing, such that even partaking of his blood becomes a 'cup of blessing'. These are clear instances of the in-breaking of God's future reign of restored relationship with creation, reconciliation and peace, joy, love and justice.

90. Therefore, it is consistent with a theological understanding of what blessing does and shows that two persons who have been legally joined in a relationship based on love and 'the mutual society, help, and comfort, that the one ought to have of the other', that a service of blessing for such persons – regardless of their previous marital status or gender – is an act of faith in which the Church recognises that such a relationship can be a sign of 'the mutual freedom of love between God and creation'.

F. Conclusion

91. In the paragraphs above it has been submitted that the Blessing Service is not inconsistent with the:

- (a) understanding of blessing as that is reflected in the canonical scriptures of the Old and New Testaments; and
- (b) understanding of doctrine as embodied in the BCP or the Articles of Religion;

and that, therefore, it is, equally, not inconsistent with the doctrine of this Church nor with the Fundamental Declarations and Ruling Principles in the Constitution.

92. One final point, from a theological perspective, concerning 'the doctrine and *principles*... embodied in the BCP ... and in the Articles of Religion'. At the time Archbishop Cranmer was initially compiling the BCP, and in the revisions it underwent, an especially theologically divisive issue was the notion of 'what happened' (to put it crudely) to the elements of bread and wine during the Prayer of Consecration in the Lord's Supper, especially when it came time to the distribution of those elements to the people.

93. In the First Prayer Book of 1549, Cranmer wrote:

"And when he [the priest] deliuereth the Sacrament of the body of Christe, he shall say to euery one these woordes.

The body of our Lorde Jesus Christe whiche was geuen for thee, preserue thy bodye and soule unto euerlastyng lyfe.

And the Minister deliuering the Sacramet of the bloud, and geuing every one to drinke once and no more, shall say

The bloud of our Lorde Jesus Christe which was shed for thee, preserue thy bodye and soule unto euerlastyng lyfe."

94. By the time of the Second Prayer Book (1552), that had changed to:

"And when he [the minister] delyuereth the bread, he shall saye.

Take and eate this, in remembraunce that Christ dyed for thee, and feede on him in thy hearte by faythe with thankesgeuing.

And the Minister that delivereth the cup, shall say.

Drinke this in remembraunce that Christ's bloude was shed for thee, and be thankfull."

95. Elizabeth I's renewed BCP (1559), which was then taken up in the BCP, combined these two forms of the words of distribution. This which allowed inclusion of (at least) two different understandings of the nature of the sacrament – one which (anachronistically we might say) was more Catholic and the other more Protestant:

"And when he [the Minister] delivereth the Bread to any one, he shall say,

The Body of our Lord Jesus Christ, which was given for thee, preserve thy body and soul unto everlasting life: Take and eat this in remembrance that Christ died for thee, and feed on him in thy heart by faith with thanksgiving.

And the Minister that delivereth the Cup to any one shall say,

The Blood of our Lord Jesus Christ, which was shed for thee, preserve thy body and soul unto everlasting life: Drink this in remembrance that Christ's blood was shed for thee, and be thankful."

96. Accordingly it is submitted that the doctrine of the BCP (regardless of its antecedents) has always been inclusive of theologically different understandings. In fact, that its *principles* were to devise liturgies that reflected such inclusivity, allowing for a broad spectrum of theological understanding, for the sake of peace in the Church (and, at the time, the realm).

97. This submission is respectfully made understanding that the matters which have led to the questions before the Tribunal have come after changes in the Marriage Act, and, as a result, the desire of Anglican Christians both to receive and offer blessings for those married in civil services. There is no intent in this submission to change the Church's doctrine of marriage. Rather, if the Tribunal chooses to respond to the questions asked of it in respect of the Fundamental Declarations and Ruling Principles in the Constitution, this submission is offered to assist in the Tribunal's deliberations for the good of the Church.
98. The burden of this submission is that the Creeds, the BCP, and the Thirty Nine articles are all silent on the matter before the Tribunal. It is hoped that the scriptural, theological and liturgical content will aid in this respect.
99. The 2018 Bishops' Conference passed a resolution responding to the recent changes in the Marriage Act, and states in part that:

"Bishops should give leadership in demonstrating trust in this [resolution] as the way to move forward together, recognising that this will require care, persistence and generosity. The bishops commit to working together to manifest and maintain unity, as we together discern the truth."

And "We affirm the need for humility and graciousness in discerning the way forward on these issues, recognising that there are complex interactions among the theological, pastoral and missional dimensions to these questions. We recognise that these are challenging matters, which resist simple solutions or courses of *action*."

And "We affirm the responsibility of ministers to pray with and care for same-sex couples in informal settings. Bishops trust that ministers will exercise discretion in their pastoral care for same-sex couples, acting in accordance with the doctrine and discipline of this Church."

And "We note that the Doctrine Commission is presently developing material to guide this Church in its discussion of marriage, same-sex marriage, blessing and related matters."

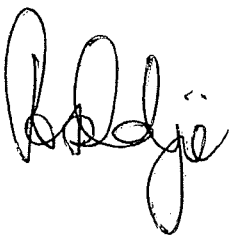
100. It is also noted that the resolution concludes with the following statement on future matters:

We note that the following are matters for continuing consideration.

- a. What is the appropriate content for an informal prayer for same-sex couples, which occurs outside a public liturgical setting?
- b. What is the relationship between prayer and blessing? What are the distinguishing marks of blessing? What is the difference between blessing and solemnising a marriage?
- c. What issues arise for officials of the Anglican Church who are merely present at a same-sex marriage or blessing of a same-sex union?
- d. How does liturgical life of this Church make sense not only of our theology but also our pastoral and missional concerns and imperatives?
- e. How do we respond to the new pastoral issues that arise from the legalisation of same-sex marriage in Australia?

101. This submission is guided by the principles within the resolution of 2018 and in the prayerful hope that we may show forth the unity of the body which our Lord prayed for on the night before he died, and calls us continually to work for under the Holy Spirit.

Dated: 13 December 2019



Archbishop Kay Goldsworthy AO
per Eric Ross-Adjie Chancellor

IN THE APPELLATE TRIBUNAL

ANGLICAN CHURCH OF AUSTRALIA

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

AND IN THE MATTER OF the Blessing of persons married according to the Marriage Act 1961
Regulations 2019 of the Synod of Wangaratta

**SUBMISSIONS BY DR KHIM HARRIS, FOR AND ON BEHALF OF
THE DIOCESE OF NORTH WEST AUSTRALIA (DNWA)**

In response to the **PRIMARY SUBMISSIONS BY SYNOD OF DIOCESE OF WANGARATTA, DNWA**
makes the following submissions:

1. As to paragraphs 1–3, noted;
2. As to paragraphs 4–6, not conceded;
3. As to sub-paragraph 6.2 DNWA submits that the Church’s teaching on marriage constitutes Doctrine of the Anglican Church of Australia under Section 74(1) of its Constitution as evidenced by *Marriage, Same-Sex Marriage and the Anglican Church of Australia, Essays from the Doctrine Commission* being a suitable subject for public deliberation by the Doctrine Commission.¹

Furthermore, Section 3 of the Constitution refers to the Church’s requirement to “follow and uphold His [Jesus’] discipline”. The regulation of human sexual relationships is clearly within Jesus’ discipline and teaching (Matthew 5:27-32; Mark 10-12; Luke 16:18, *passim*).

Accordingly, DNWA submits that the Church’s teaching on marriage constitutes “a question arising under this Constitution” pursuant to Section 63 (1) of the Constitution.

4. As to paragraph 7, not conceded;
5. As to paragraphs 9–10, noted;
6. As to paragraphs 11–20, not conceded;
7. As to paragraphs 21–27, not conceded;
8. As to paragraphs 28–52, not conceded;

¹ Specifically, Rhys Bezzant’s essay “To what end? The blessing of same-sex marriage”, pp 227–240 addresses same sex blessing. Bezzant argues that Lambeth Resolution 1.10.5 (1998) equates blessing of with legitimizing same sex unions.

9. As to paragraphs 53 and 56, the DNWA notes that Article XXXII *Of the Marriage of Priests* has as the objective "to serve to better Godliness" in any decision of a priest to marry;
10. As to paragraphs 54, 55, 57–63, not conceded;
11. As to paragraphs 64–67, DNWA notes allusion to unspecified "certain Biblical verses". Otherwise, not conceded;
12. As to paragraphs 68–70, not conceded; and
13. As to paragraphs 71–73, not conceded.

Dated 13 December 2019



Dr Khim Harris
Registrar, DNWA

IN THE APPELLATE TRIBUNAL

ANGLICAN CHURCH OF AUSTRALIA

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

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

In answer to the questions referred to the Appellate Tribunal I submit:

1. The *Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019* is **subject** to the Fundamental Declarations and Ruling Principles of the Constitution of the Anglican Church of Australia, and **is not consistent with them** on the basis that it promotes the Formalised Blessing of a marriage union other than that of the lifelong union of one man and one woman to the exclusion of all others.
2. That 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 subject** to the Fundamental Declarations and Ruling Principles of the Constitution of the Anglican Church of Australia, and **is not consistent with them** on the basis that it promotes the Formalised Blessing of a marriage union other than that of the lifelong union of one man and one woman to the exclusion of all others.
3. That, considering the above determination, that the current Regulations **are not validly made**.

Appellate Tribunal jurisdiction

4. The Appellate Tribunal has jurisdiction where a matter arises under the Constitution (section 63) or where an Act or Proposal of the General Synod is referred (section 29).
5. In this case the proposed Regulations fall under the Appellate Tribunal's jurisdiction as they are not consistent with the "doctrine and principles of the Church of England embodied in the Book of Common Prayer" (Section 4 Constitution).
6. Any claim that the proposed Regulations make no change to "doctrine" should be rejected by the Appellate Tribunal as it is clear in the Constitution that "the Book of Common Prayer, together with the Thirty-nine Articles, be regarded as the authorised standard of worship and doctrine in this Church" (Section 4 Constitution). Here, "worship and doctrine" is whatever the Book of Common Prayer and the Thirty-nine Articles articulate, and the Book of Common Prayer does include the worship and doctrine of marriage in fulsome theological detail.
7. The Regulations of the Synod of Wangaratta do amount to a change of the doctrine of marriage provided by *the Book of Common Prayer*, by recognising, validating and

blessing a marriage union other than the lifelong union of one man and one woman to the exclusion of all others.

8. The General Synod has a Doctrine Commission which has considered same-sex attraction, marriage and blessing at length, and which lends further weight to my contention that these matters are considered as Doctrine within the Anglican Church of Australia.

General Response to the Wangaratta Regulations

9. The Regulations of the Synod of Wangaratta are an unfortunate attempt to circumnavigate the usual processes of the good order and government of the Anglican Church of Australia, specifically the bringing of an Act to be passed by the General Synod and assented to by all member Diocese of the Anglican Church of Australia.
10. The above process of good government should be reinforced by the Appellate Tribunal as the only method available to make a change to the Doctrine of the Anglican Church of Australia.
11. The process undertaken by Wangaratta has its antecedents in the schismatic politics that beset the Episcopal Church of North America (TEC) and their disobedience to the Instruments of Communion following the 1998 Lambeth Conference.
12. This Regulation of the Diocese of Wangaratta further endangers any national unity within the Anglican Church of Australia.
13. The Appellate Tribunal is provided with an opportunity to prevent the Diocese of Wangaratta from exiting Communion with the Anglican Communion, given the clear guidance from the Primates Council (and subsequent Windsor Report) and the clear definitions provided by the Lambeth Conference 1998 at Resolution 1:10 which held in part that "[the conference] cannot advise the legitimising or blessing of same sex unions nor ordaining those involved in same gender unions".

Specifically relating to the Wangaratta Submission

14. Point 13 should be rejected as the Appellate Tribunal's jurisdiction exists given that the Submission is not consistent with the Fundamental Declarations and Ruling Principles, in that it contravenes principles of doctrine and worship laid down in the *Book of Common Prayer* in its section on Marriage.
15. Points 18 is wholly incorrect and should be rejected. The constitutional status of doctrine is not one of an open legal question – it is actually defined in the Ruling Principles which state that "the Book of Common Prayer, together with the Thirty-nine

Articles, be regarded as the authorised standard of worship and doctrine in this Church" (Section 4 Constitution). Here, "worship and doctrine" is whatever the Book of Common Prayer and the Thirty-nine Articles articulate, and the Book of Common Prayer does include the worship and doctrine of marriage in fulsome theological detail.

16. Points 21 to 23 should be rejected, for the reasons outlined above at my section 6, 13 & 14.
17. Point 24.1 should be rejected, as the open nature of the Regulations cannot guarantee that this form of service could not be used to bless those things which are contrary to the standard of faith articulated in Fundamental Declaration 2.
18. Point 24.2 and 24.3 should be rejected, for the reasons outlined above at my section 6, 13 & 14.
19. Point 27 should be rejected. It is a weak contention indeed that would argue that any Diocese might make any Regulation that directly contradicts the clearly defined theological position of the Anglican Church of Australia and her doctrine, but hope that because it does not use the defined term (in this case, the word Marriage) it might be unassailable to challenge, review or repeal.
20. Point 29 should be rejected, for the reasons outlined above at my section 6, 13 & 14.
21. Point 30 should be rejected, as it fails to consider the definition of doctrine outlined in the Guiding Principles (see my section 6, 13 & 14 above).
22. Point 51 is correct, and should be upheld by the Appellate Tribunal, however it is immediately misapplied in Point 51.2 by artificially limiting doctrine to those parts of BCP which "include the Creeds and the Catechism which represent part of the Fundamental Declarations and which are doctrine." This is an entirely artificial construct not known either to the drafters of BCP or the Constitution, and it should be rejected. BCP also contains much doctrine of the church in teaching the faith in circumstances of sickness, baptism, confirmation, marriage, death and so on. There will no doubt be other submissions that will better undertake an outline of the doctrine of Marriage that is outlined in BCP which I would commend.
23. Points 53 and 54 are correct but diminished by the description given as "teaching" rather than correctly assigning this as "doctrine". The sentence that should be endorsed is "The Church's doctrine of marriage is to be found in its forms of service for marriage, most particularly in the BCP..."
24. Point 56 should be rejected, as the previous examples and statements of the Tribunal related to a significantly different case, namely the Ordination of Women. There can be no question that there is significantly more said expressly in the BCP about marriage than there is about the gender of presider, and that what is said is theological and doctrinal in seeking to give a summary of all the scriptural witness. The attempted correlation and/or conflation of these two vastly different issues should be rejected.

25. Point 57 articulates clearly the position I would commend to you.
26. Point 58 and the attached quotation again seeks to link the Ordination of Woman and the present argument. Further to my point 23 above, there was no scriptural warrant for the prohibition of women ministers in contrast to those well-known scriptures that prohibit homosexuality which undercuts the application of the quoted reasoning of Vice-President to this present case.
27. Point 59 should be rejected completely for the reasons given above at my points 21, 23 & 25.
28. Point 63 should be rejected as it is my contention that the BCP marriage service provides precise and relevant worship and doctrine for how people in a civil marriage may be blessed by the church, and also the limitation of that blessing to a man and woman to the exclusion of all others for life.
29. Point 64 should be rejected, largely on the grounds of its understatement. At the level of the One, Catholic and Apostolic Church of which we claim to be a part, the overwhelming majority of historic and present scholarship, doctrine and canon law support the orthodox position of marriage as being between one man and one woman to the exclusion of all others for life, and the majority would cite the "few phrases" as an authoritative guide for this position. Within the Anglican Communion the overwhelming majority of the world's Anglicans, along with the clear guidance of Lambeth Resolution 1:10 and the subsequent Primate's Councils, have likewise affirmed the same, citing those same "few phrases" as an authoritative guide for their position. There are clear definitions that have existed here for centuries and so the Appellate Tribunal should not be slow to call to account those that have sought to push the boundaries of our very Communion.
30. Point 65 should be rejected for the reasons given above at my points 21, 23 & 25.
31. Point 66 should be rejected as it fails to accurately convey the import of the matter before the Appellate Tribunal: an issue that has caused the almost irreparable tearing of the fabric of the Anglican Communion, and a clear 'red-line' issue for Anglicans from a conservative theological persuasion across Australia. The Appellate Tribunal is certainly not the ideal forum in which this debate is to be had – that would have been at General Synod and following the good and proper processes of government of our Church.

However, that most appropriate option was not selected by the Diocese of Wangaratta and so it is the case that the Appellate Tribunal is equipped to resolve the debate, and I submit it must do so by reinforcing the historic doctrine of marriage as articulated in the BCP and which is appealed to by the Fundamental Declarations and Guiding Principles.

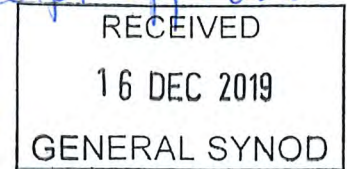
Yours faithfully,

The Reverend Stephen Conway
13 December 2019



late receipt approved

AM



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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:

“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 πορνεῖται) 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 πορνεῖται (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 (*paiderastês*) 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. Brooken, *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 vermillion, 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 αὔχημα οὐ τοῖς δρῶσι μόνον, ἀλλὰ καὶ τοῖς πάσχουσιν, οἳ νόσον θήλειαν νοσεῖν ἐπιζόμενοι τὰς τε ψυχὰς καὶ τὰ σώματα διαρρέουσι μηδὲν ἐμπύρευμα τῆς ἄρρενος γενεᾶς ἐὼντες ὑποτύφεσθαι, περιφανῶς οὕτως τὰς τῆς κεφαλῆς τρίχας ἀναπλεκόμενοι καὶ διακοσμούμενοι καὶ ψιμμουθίῳ 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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changing their manly character into an effeminate one.	
(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.	εἰς θήλειαν μεταβάλλειν οὐκ ἐρυθριῶσι. καθ' ὧν φονᾶν ἄξιον νόμῳ πειθαρχοῦντας, ὃς κελεύει τὸν ἀνδρόγυνον τὸ φύσεως νόμισμα παρακόπτοντα νηποινεῖ τεθνάναι, μηδεμίαν ἡμέραν ἀλλὰ μηδ' ὥραν ἐώμενον ζῆν, ὄνειδος αὐτοῦ καὶ οἰκίας καὶ πατρίδος ὄντα καὶ τοῦ σύμπαντος ἀνθρώπων [39] πων γένους.
(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	ὁ δὲ παιδεραστής ἴστω τὴν αὐτὴν δίκην ὑπομένων, ἐπειδὴ τὴν παρὰ φύσιν ἡδονὴν δίδωκει καὶ τὰς πόλεις τό γε ἐπ' αὐτὸν ἦκον μέρος ἐρήμους καὶ κενὰς ἀποδείκνυσιν οἰκητόρων διαφθεύων τὰς γονὰς καὶ προσέτι τῶν μεγίστων κακῶν, ἀνανδρίας καὶ μαλακίας , ὑφηγητὴς καὶ διδάσκαλος ἀξιοῖ γενέσθαι τοὺς νέους ὠραῖζων καὶ τὸ τῆς ἀκμῆς ἄνθος ἐκθηλύνων, ὃ πρὸς ἀλκὴν καὶ ῥώμην ἀλείφειν ἀρμόττον ἦν, καὶ τελευταῖον ὅτι κακοῦ τρόπον γεωργοῦ τὰς μὲν βαθυγείους καὶ εὐκάρπους ἀρούρας χερσεύειν ἑᾶ μηχανώμενος ἐπ' αὐταῖς ἀγόνιαν, ἐξ ὧν δ' οὐδὲν βλάστημα προσδοκᾶται τὸ παράπαν,

<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 δῆμων ἀκρασίας καὶ μαλακίας ἄθλα κεῖσθαι· τοὺς γοῦν ἀνδρογύνους ἔστιν ἰδεῖν διὰ πληθυσίας 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 αἵτιοι 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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CQ Appellate Tribunal Submission

November 2019
Bishop-in-Council
Diocese of Rockhampton

Introduction

The preface to the Book of Common Prayer states,

“It is a most invaluable part of that blessed ‘liberty wherewith Christ hath made us free’, that in his worship different forms and usages may without offense be allowed, provided the substance of the Faith be kept entire; and that, in every Church, what cannot be clearly determined to belong to Doctrine must be referred to Discipline.”

Discipline can be seen as the local expression of worship, such as within the forms seen in the dance and song of our African brothers and sisters, or the churchmanship adopted from place to place. The various disciplines of the autonomous provincial churches can be contextualised, but doctrine, based on Scripture, transcends all such cultural distinctions.

As a Diocese we welcome fresh expressions of worship which help our church be “all things to all people” (1 Corinthians 9), and believe that it is a commendable thing to adapt our rituals and liturgies to better engage with our changing community; and we commend the Diocese of Wangaratta for seeking to do this. However as our preface implies, it is possible to make changes that do cause offence to scripture, and in the opinion of the Diocese of Rockhampton, we believe that the **Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019** that is being promoted by the Diocese of Wangaratta is flawed on the grounds that the doctrine contained therein is not validated by God’s word.

The doctrine of the Anglican Church of Australia has been built from the word of God; and we are convinced that scripture is the central authority in the Anglican Communion.

From Thomas Cranmer to Richard Hooker, from the Thirty-Nine Articles and the 1662 Ordinal to the 1998 Lambeth Conference, the authority of Scripture has always held a foundational role in Anglican identity and polity. We believe that if the authority of scripture is no longer to be considered the central authority in the Anglican Communion, nor the defining characteristic of Anglican identity, then, we as a communion will cease to be an authentic expression of the Church of Jesus Christ.

Question 1: To be Considered by the Appellate Tribunal

1. Whether the regulation *Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019* made by the Synod of the Diocese of Wangaratta is consistent with the Fundamental Declarations and Ruling Principles in the Constitution of the Anglican Church of Australia.

Response

The constitution of the Anglican Church of Australia allows for Bishops to make canons, ordinances and rules for the good governance of the church where such canons ordinances and rules do not contravene the principles of the doctrine of the church as set out in the book of common prayer and the 39 articles.

Article 22, for example, highlights that doctrines of human invention should not overrule the Scriptures. It states that purgatory and its siblings are

“a fond thing vainly invented, and grounded upon no warranty of Scripture, but rather repugnant to the Word of God.”

Article 20 also stresses the supreme authority of the Bible over God’s Church. This article declares,

“it is not lawful for the Church to ordain any thing that is contrary to God’s Word written.”

We believe that the Regulations made by the Synod of Wangaratta are inconsistent with the **fundamental declarations** and **ruling principles** in the following ways:

A. FUNDAMENTAL DECLARATIONS

1. Founded Upon the One Holy Catholic and Apostolic Church

The Church of England in Australia, being a part of the one Holy Catholic and Apostolic Church of Christ, holds the Christian Faith as professed by the Church of Christ from primitive times and in particular as set forth in the creeds known as the Nicene Creed and the Apostles’ Creed.

We believe that the Regulations made by the Synod of Wangaratta to be a significant and critical shift from Church Doctrine and the authority of Scripture and if allowed or endorsed by the Appellate Tribunal will risk the Anglican Church of Australia departing from our biblical foundation.

As a diocese we believe commitment to the authority of scripture to be one of the defining characteristics of Anglican identity, and we believe this to be the understanding of the majority of Anglicans worldwide. We believe that for the Anglican Church of Australia to compromise its obedience to the scriptures and conform to the ways of the world undermines 500+ years of Reformed Protestant Christianity – and we need to protest about this development!

The bishops of the Anglican Communion in 1998 upheld the orthodox teaching that Christian marriage is between a man and a woman and that those who are not called to Christian marriage so defined should remain celibate. Lambeth Resolution 1.10, the 1998 decision on human sexuality, included the words “incompatible with Holy Scripture” when describing homosexual practice.

Bishop Alf Chipman who is an active retired member of the clergy in our Diocese was a member of the ‘human sexuality group’ which drafted Resolution 1.10. In recalling the process which led to the almost unanimous resolution he speaks of the “significant compromise and good will required to achieve the middle ground which was acceptable in wording to the entire human sexuality group of the Lambeth Conference 1998”. He continued that “in his opinion, the process was truly Anglican in that differing groups were willing to work to find a middle ground which led to a final, almost unanimous resolution.” Bishop Alf additionally commented that on settling in Central Queensland, the presiding Bishop of Rockhampton had held unflinchingly to the doctrine of Christian marriage as being between a man and a woman. As a Diocese we continue to believe and uphold this doctrine of the church and believe any change to this doctrine to be contrary to the mind of Christ and the teaching of scripture. In our opinion, the clarity of God’s truth on this matter remains unchanged despite hermeneutical methods designed to justify homosexual behaviour and Same Sex Marriage.

We hold that humans are effective agents of blessing only when the blessing sought aligns with the will of God. As a Church we must not begin to declare good what is not of God or pronounce God’s blessing upon something which is clearly outside of His declared mind or will. (Isaiah 5:20)

2. Founded Upon the Canonical Scriptures

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

As a church we affirm the canonical scriptures of the Old and New Testaments as being the ultimate rule and standard of faith given by God as containing all things necessary for salvation. We further believe that the **Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019** made by the Synod of the Diocese of Wangaratta to be a serious departure from the inspired word of God, because the Australian Marriage Act 1961, recently amended, has now redefined marriage to include the marriage of Same-Sex people.

We affirm the authority of scripture, and the place of the 39 articles and the ancient creeds informing doctrine. As such we are committed to the authority of scripture as the inspired word of God, and as such the Anglican Diocese of Central Queensland believes that sex is given by God as an expression of love to be shared and enjoyed exclusively between a husband and wife. Further, we are convinced that the Bible leaves no room whatsoever for confusion or ambiguity where homosexual behaviour is concerned. Scripture both explicitly and implicitly regards same sex relationships as falling outside of God's intention in creating man and woman as sexual beings who bear His image as male and female.

We see no place for same-sex 'marriage' within the context of a Christian worldview, and therefore no place for the blessing of such unions in the Church. According to the Bible, Christian marriage is heterosexual *by definition*. Jesus, when expressing his understanding of the scriptural foundation for the divine purpose and design in marriage, referred to its origins in the creation account:

"From the beginning of creation, God made them male and female. For this cause a man shall leave his father and mother, and shall cleave to his wife, and the two shall become one flesh..."

(Mark 10:6-8, quoting Genesis 2:24).

As a Diocese we believe that scripture is clear in this matter and since the formation of the Church our doctrine has aligned with the Biblical understanding of marriage. We believe that providing for the blessing of something that we know to be contrary to the teaching of God through His word is the same as saying (to our congregations and secular society) that we do not hold the Canon of Scripture in the Old and New Testaments to be the inspired word of God. Meaning God's word is much more than "the ultimate rule and standard of faith" as declared by the Synod of Wangaratta. As a Diocese we believe that this amounts to false teaching as warned about throughout both the Old and New Testaments.

3. Founded Upon Christ and His Commands

This Church will ever obey the commands of Christ, teach His doctrine, administer His sacraments of Holy Baptism and Holy Communion, follow and uphold His discipline and preserve the three orders of bishops, priests and deacons in the sacred ministry.

In consideration of the above, we believe that the Regulations made by the Synod of Wangaratta are opposed to the teaching of Christ. We believe that any priest or bishop performing such blessings will be working contrary to their oaths and declarations as outlined in The Ordinal in the following ways.

In the oaths and declarations of a Priest, (Item 15)

"Are you convinced that the holy scriptures contain all doctrine necessary for eternal salvation, through faith in Jesus Christ, are you determined to instruct from these scriptures the people committed to your care, teaching nothing as essential to salvation which cannot be demonstrated from the scriptures?"

"I am convinced, and will do so by God's grace."

In the oaths and declarations of a Priest, (Item 15)

"Will you faithfully and humbly minister the doctrine, sacraments and discipline of Christ, as he has commanded and as this church has received them?"

"I will, by God's grace."

In the oaths and declarations of a Priest, (Item 15)

"Will you be ready, both in your public and private ministry to oppose and set aside teaching that is contrary to God's word?"

"I will, by God's grace."

In the oaths and declarations of a Bishop, (Item 13)

The Authority for the consecration shall then be read. The archbishop addresses the bishop-elect, saying

"The Anglican Church of Australia, being an Apostolic Church, receives and retains the Catholic faith, which is grounded in Holy Scripture and expressed in the Creeds, and within its own history, in the Thirty-Nine Articles, in The Book of Common Prayer and in the Ordering of Bishops, Priests and Deacons.

In accordance with the Canons of this Church, I now require you to make your Declaration and Assent to this faith."

The bishop-elect makes the form of Declaration and Assent.

I firmly and sincerely believe the Catholic Faith and I give my assent to the doctrine of the Anglican Church of Australia as expressed in the Thirty-Nine Articles of Religion, The Book of Common Prayer and the Ordering of Bishops, Priests and Deacons; I believe that doctrine to be agreeable to the Word of God; and in public prayer and administration of the sacraments I will use the form in the said book prescribed, and none other, except as far as shall be ordered by lawful authority.

In the oaths and declarations of a Bishop, (Item 14)

The bishop-elect assents to the Constitution and Canons of the Anglican Church of Australia.

I, NN, do solemnly and sincerely declare my assent to be bound by the Constitution of the Anglican Church of Australia [and the Constitution of the Province of N] and of this diocese and by the canons, statutes, ordinances and rules, however described, from time to time of the synod of this diocese and of the General Synod [and of the Provincial Synod] which have force in this diocese.

In the oaths and declarations of a Bishop, (Item 18)

The archbishop says

A bishop is called to maintain the Church's witness to the resurrection of Christ from the dead, to protect the purity of the gospel, and to proclaim Jesus Christ as Lord. As a chief minister and pastor in Christ's Church, you are to guard its faith, unity and discipline, and promote its mission in the world. You are to ensure that God's word is faithfully proclaimed, Christ's sacraments duly administered, and Christ's discipline applied justly, with mercy. You are to lead and guide the priests and deacons under your care, and be faithful in the choosing and ordaining of ministers. You are to watch over, protect and serve the people of God, to teach and govern them, and to be hospitable. You must, therefore, know and be known by them, and be a good example to all. These are the duties of a bishop, and they are weighty. Are you willing to perform them?

The bishop-elect responds

I am willing: may God guide and help me.

In the oaths and declarations of a Bishop, (Item 19)

Are you convinced that the holy Scriptures contain all doctrine necessary for eternal salvation through faith in Jesus Christ? Will you instruct from them the people committed to your care, teaching nothing as essential to salvation which cannot be demonstrated from the Scriptures?

I am convinced, and will do so, with God's help.

Will you administer with mercy the discipline of this Church? Will you correct and set aside teaching that is contrary to the mind of Christ, both privately and publicly urging all to live according to God's word?

I will, endeavouring to apply the law of Christ with the grace of God.

Consequently, the oaths that our Deacons, Priests and Bishops make before God and His people, are serious and binding. They are governed by an adherence to the authority of God's word and to depart from them is to promote schism and division, the very thing that a Bishop is asked to guard against.

B. RULING PRINCIPLES

"This Church, being derived from the Church of England, retains and approves the doctrine and principles of the Church of England embodied in the Book of Common Prayer together with the Form and Manner of Making Ordaining and Consecrating of Bishops, Priests and Deacons and in the Articles of Religion sometimes called the Thirty-nine Articles but has plenary authority at its own discretion to make statements as to the faith ritual ceremonial or discipline of this Church and to order its forms of worship and rules of discipline and to alter or revise such statements, forms and rules, provided that all such statements, forms, rules or alteration or revision thereof are consistent with the Fundamental Declarations contained herein and are made as prescribed by this Constitution. Provided, and it is hereby further declared, that the above-named Book of Common Prayer, together with the Thirty-nine Articles, be regarded as the authorised standard of worship and doctrine in this Church, and 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.

Provided further that until other order be taken by canon made in accordance with this Constitution, a Bishop of a Diocese may, at his discretion, permit such deviations from the existing Order of Service, not contravening any principle of doctrine or worship as aforesaid, as shall be submitted to him by the Incumbent and Churchwardens of a parish."

We believe that the **Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019** accepted by the Synod of the Diocese of Wangaratta is in breach of the ruling principles in the following way:

The book of common prayer and its authorised successors underline the position that Christian Marriage is not a social convention but a church doctrine based on the Scriptures. The Bible teaches that family was God's idea and that marriage is a divine, not merely human, institution. The implication of this truth is significant because it means that humans are not free to renegotiate or redefine marriage and the family in anyway they choose but that they are called to preserve and respect what has been divinely instituted. This is in keeping with Jesus' words, uttered when asked about the permissibility of divorce:

"What therefore God has joined together let not man separate." (Matthew 19:6)

For this reason, marriage is far more than a human social contract; it is a divinely instituted covenant. We believe for the church to endorse the blessing of unions as prescribed by the Synod of Wangaratta to be a breaking of covenant with God, against the teaching of scripture and outside the established doctrine of the church.

Question 2: To be Considered by 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.

As stated in the introduction, the development of new services and resources that enable God's people to better minister to the needs of the community is to be encouraged and commended. However, the desire to be relevant to contemporary society must always be tempered with adherence to the truths of the gospel and especially with the revealed word

of God as found in the Scriptures. Imagine what the church would have become if it sought to bless Caesar worship and veneration in the first century or developed a liturgy to abandon children on the hillsides. It would have ceased to be the Church of God.

In our opinion, the Synod of Wangaratta desires to use Section 5.2 of the Canon Concerning Service 1992 to provide for the inclusion of the blessing of same sex marriages within the Anglican Church of Australia. However, we believe that the context of Section 5 as a whole prohibits any action that is *“contrary to or a departure from the doctrine of this church”* as outlined in Section 5.3 of the same Canon.

As mentioned above, it is our firm belief that blessing any union outside the orthodox biblical view of marriage being a union between one man and one woman is not consistent with the **Fundamental Declarations and Ruling Principles in the Constitution of the Anglican Church of Australia**. Consequently, it is our belief that Section 5.3 has been ignored in the thinking and formulation of the Wangaratta Synod Regulation. As such the Diocese of Rockhampton cannot give its blessing to Wangaratta’s Regulation.

Question 3: To be Considered by the Appellate Tribunal

Whether, in light of the determinations to be made in Questions 1 & 2, the Regulations are validly made pursuant to the *Canon Concerning Services 1992*.

With the above mentioned concerns, it is the prayerful and considered position of the Synod of the Diocese of Rockhampton that regulation is not made validly pursuant to the Canon Concerning Services 1992.

Firstly, Section 5.3 of the Canon Concerning Services 1992, states “All variations in forms of service and all forms of service used must be reverent and edifying and must not be contrary to or a departure from the doctrine of this Church.” As outlined above we believe the Regulation of the Wangaratta Synod is a significant departure from the inspired word of God and the doctrine of this church.

Secondly, whilst Section 5.4 allows for questions to be determined by the Bishop of the Diocese, it was never envisaged that these determinations contravene the Oaths and Declarations set out in the ordination of a Bishop as cited above.

Hence it is the unwavering opinion of the Diocese of Rockhampton that the Wangaratta Regulations **are not validly made pursuant to the *Canon Concerning Services 1992***.

Conclusion

In light of the arguments made above, the Diocese of Rockhampton believes that the **Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019**, adopted by the Synod of Wangaratta contravenes the Constitution of the Anglican Church of Australia; does not conform to church doctrine; and is a departure from the clear teaching of Jesus, as found in the holy Scriptures. The implementation of the Regulation thus sanctions false teaching and promotes schism within the Anglican Church of Australia.

We call on the Bishop of Wangaratta and the Synod of the Diocese of Wangaratta to repent of their failure to maintain teaching and doctrine aligned to the teaching of Christ on marriage. We further strongly urge the Appellate Tribunal to uphold the doctrine of Christian Marriage as being between a man and a woman, and find that the "Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019" contravenes the foundational regulations and ruling principals of the Anglican Church of Australia.

The Blessing of Civil Unions
Address to the Synod of Wangarratta
31 August 2019

Mr President and Members of Synod, I have been asked to address you on the subject of the blessing of civil marriages within the liturgical life of the church. So I thought we should begin by looking at blessing in the world of the Bible, then briefly about blessing in our Anglican tradition, and finally about the blessing of civil unions in general from a theological perspective.

1. Blessing in the biblical world

Blessing is an important concept in the biblical world. To be blessed by God means to receive God's favour in protection of us and provision for us. At the beginning of creation, living creatures are blessed by God, including human beings, so that they may thrive and flourish (Gen 1:22, 28). By implication, God's favour lies on the whole creation which is declared 'good' and continues its life under that same divine blessing.

In addition, blessing is also associated with the covenant: to be blessed by God means to be in a relationship with God of love and obedience. For Abraham, the blessing resting on him is not just for himself. He is also to be a source of blessing for other people and nations (Gen 22:17-18).

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. The Law calls for justice and goodness in Israel's relationships: with one another, with foreigners in their midst, with their animals, and even with the land itself (Exod 23:1-12).

The same notion of blessing is found in the New Testament but with a new dimension. Blessing is still about covenant, relationship and justice but now it is also eschatological, the promise of God's kingdom finally overturning the values of the world. This is exemplified in Jesus' own life as he identifies with the poor, the humble, the peacemakers, and the persecuted who receive God's favour – both now and in the age to come (Matt 5:3-10; Lk 6:20-23).

Across the Bible, the covenant people of God are summoned to bless God in return. 'Bless the Lord, my soul' begins Psalm 103, and goes on to enumerate the reasons for blessing God: forgiveness, healing, mercy, justice, and goodness. Paul speaks in similar terms of rejoicing in the Lord and bringing our thanksgivings (blessings) and our supplications before God (Phil 4:4-8).

For us to bless God means that we acknowledge we are recipients of God's blessing. We praise God for the blessings God has showered upon us, and especially for the joy of salvation.

This sense of joyful praise and blessing is captured in the canticles of Luke's birth story, especially in the Magnificat and Benedictus: 'My soul magnifies the Lord and my spirit rejoices in God my Saviour', sings Mary; 'Blessed be the Lord, the God of Israel who has visited and redeemed his people', proclaims Zechariah (Lk 1:46-55, 68-79).

The divine blessing is not just for the insiders. In the Sermon on the Mount, Jesus says that God's rain and sun fall and shine on the righteous and unrighteous alike. Jesus' disciples are called to love all, even their enemies (Matt 5:43-48). Our blessing, like God's, is to flow to all people and, indeed, to all living creatures.

2. The place of blessing in the Anglican tradition

The Anglican tradition, based on Scripture, takes blessing very seriously. Liturgy and worship represent the core of our life together, grounded in God's blessing of us, and all for whom we pray, along with our responsive blessing (praise) of God.

The centre of blessing is the Eucharist, where the bread and wine are blessed to become the body and blood of Christ. Here we share together in his crucified and risen life, and taste something already of the life to come.

We also bless people – that is to say, we believe we are given authority to convey God's blessing to others. This is particularly so for the blessing given by priests but in fact all God's people can bless. 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.

3. Civil unions and blessing

In 2005, the Rt Revd Dr Rowan Williams, then Archbishop of Canterbury, conducted a service of Prayer and Dedication following the civil union of Prince Charles and Camilla Parker-Bowles. This was effectively a blessing on their civil union. At that time, divorced people could not be remarried in the Church of England.

Divorced people in Australia have been able to remarry in many dioceses of the Anglican Church since 1985. Those compelled to marry in civil rather than church unions before that date should indeed be able to request the church's blessing on their marriages, as Archbishop Rowan realised.

There are other reasons too that couples marry in civil ceremonies, who subsequently desire the church's blessing on them and their union.

What of gay and lesbian couples? Currently, they cannot marry in our church. The Bishops have confirmed that current church teaching says that marriage can only be between male-female couples. Recently they have arguably hardened their position against same-sex marriage by stating that such marriages cannot be held on Anglican property and that church 'officials' may even be prohibited from attending a same-sex marriage.

Since Australia legislated for full marriage equality in 2017, the avenue of blessing same-sex unions needs to be seriously considered. Gay and lesbian married couples are like divorced couples before 1985 in need of the church's blessing. 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?

An answer of a sort has been given: that same-sex unions are overtly condemned by Scripture. There are admittedly a handful of texts that, at first glance, seem to rule out same-sex partnerships. Three of these passages occur in the New Testament, within the Pauline body of writings.

Yet this reading of the three texts is open to question. It is not at all clear that what Paul is speaking of is covenant partnerships between same-sex couples. The issue is

complicated by some of our English translations: the NIV, for example, translates 1 Tim 1:10 as 'those practicing homosexuality', despite serious reservations about its meaning.

The recent book of the Doctrine Commission, *Marriage, Same-sex Marriage and the Anglican Church of Australia*, presents arguments for and against same-sex covenant unions. A number of these articles argue on biblical grounds that there is no theological objection to same-sex covenant partnerships.¹

The argument of these essays is that Jesus himself never said a word against homosexuality and that the Bible is addressing very specific kinds of wrong-doing: whether the sexual abuse of minors, sexual violence or, as in Rom 1:26-27, lustful, same-sex acts engaged in by heterosexuals.

One of the words used in the Pauline corpus (*arsenokoitês*) is seriously disputed so that we cannot even be certain of its meaning (1 Cor 6:9; 1 Tim 1:10). It means literally 'male-bedding' and may well refer to pederasty: the common practice of older men having sexual relationships with boys.

It is true that the Bible nowhere advocates same-sex unions; but it does not advocate for the union of divorced persons either. There are situations, in other words, that the Bible does not envisage in specific terms. We are called, instead, to draw out biblical principles on which to base pastoral practice in new contexts. Many Anglicans rightly take the view that what is not actually *forbidden* in Scripture can be done with good, theological and biblical reasons.

The ancient contexts of the biblical world always need to be taken into account. There is an array of different marriage practices in the Old Testament, including polygamy. Some New Testament texts appear to condone slavery but a deeper understanding of biblical principles leads us in the opposite direction: to condemn the ownership of one human being by another. The same can be said of those texts where wives are told to obey their husbands; a deeper biblical insight teaches us, however, that men and women are equal in Christ and therefore in marriage (Gal 3:27-28).

In other words, the means of dismantling all structures of oppression and exclusion lies within the pages of the Bible itself when it is understood theologically – rather than by cherry picking occasional verses out of context.

As a previous Bishop of Gippsland said in his presidential address to his Diocese in 2012, if gay and lesbian couples display the fruits of the Spirit, then their lives and relationships should be considered godly and in accord with the Spirit (see Matt 7:16-20; Gal 5:22-23).

There is an irony in the debate around same-sex partnerships. Social conservatives in the church admit that there is no sin in being homosexual, only in homosexual practice. But, if *being* homosexual is not sinful and no single New Testament text forbids loving unions, we need to ask on what actual grounds we refuse to acknowledge and celebrate gay and lesbian relationships.

Conclusion

The desire of any Christian couple to receive the divine blessing on their life together should be taken seriously in our pastoral ministry. God's favour and provision for them should be assured. It is not our place to withhold blessing from those whom God has already blessed with the gift of committed, faithful love.

There are no theological grounds for refusing to bless civil unions. On the contrary, faithful and loving Christian couples, whatever their sexual orientation,

¹ See especially articles by Matthew Anstey, Bp Stephen Pickard, Muriel Porter, Gregory Seach, Meg Warner, and myself.

gender, race or class, should be able to ask for and receive the church's blessing. They belong within the covenant of God's people and therefore stand firmly under the protection and provision of God. They too are called, not only to receive blessing, but also to be a blessing to others.

The practice of blessing is integral to the Bible's profound understanding of the covenant. That rich, divine blessing is to be received with our blessing – our praise and thanksgiving – and to be shared with others. It meets us now in the life of the church, drawing into the centre those pushed to the outside, those who feel like foreigners among their own people.

Blessing is embodied above all in Jesus who, having fulfilled the covenant on our behalf, departs this earth at the Ascension with his hands raised in blessing (Lk 24:50-51). The same blessing will one day be fulfilled in the triune God for the whole creation, and for that blessed day we in the church live and work and pray.

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