



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)

Submissions in Response - 14 February 2020

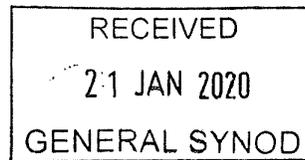
(including late submission at 5 March 2020)

General Synod Appellate Tribunal - Wangaratta

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Anne Heyward
Registrar
Appellate Tribunal



R1

Further Submission from the Rev'd Dr David Seccombe

I wish to comment on one section of the Primary Submissions of the Synod of the Diocese of Wangaratta to the Appellate Tribunal, namely that under the heading of Scripture (paragraphs 64-67).

In summary, the Diocese of Wangaratta submits that the Tribunal should ignore and leave aside the teaching of Holy Scripture, its reason being that there are different interpretations amongst scholars and practicing Anglicans.

I submit –

That it is because of such differences that the Tribunal is being asked to give its opinion.

That the grounds of its opinion is to be the consistency of the Wangaratta Synod's resolution with the teaching of Holy Scripture, Prayer Book, Constitution etc., the teaching of Scripture being primary.

That the interpretation of Prayer Book, Articles etc. has also been disputed, yet the Tribunal is being asked to form an opinion based on these.

That to ignore the teaching of Holy Scripture would be an abandonment of the Tribunal's responsibility.

That the teaching of Scripture on the matter in hand is straightforward and plain, there being many places in Old Testament and New where the issue of same-sex sexual relations is addressed, and in every case they are prohibited, and in no place anywhere in Scripture is there any other view expressed.

That to disallow consideration of Scripture's teaching on the issue in hand on the grounds of certain (recent) differing interpretations, which on inspection may prove to be misinterpretations and evasions, is tantamount to contempt of God's Word and commandments, such as we pray in the Litany: 'Good Lord, deliver us.'

David Seccombe (Rev'd Prof. Dr)
21 January 2020

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GENERAL SYNOD

R2

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 of the
Synod of Wangaratta*

RESPONSIVE SUBMISSIONS BY DR DAVID PHILLIPS

Tea Tree Gully Anglican Church, Diocese of Adelaide

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Introduction

1. These submissions respond to some of the primary submissions published by the General Synod Appellate Tribunal of the Anglican Church of Australia.
2. In particular, these submissions respond to the primary submissions of
 - 2.1. Mr Brian and Mrs Helen Gitsham (submission 8) and
 - 2.2. Rev'd Associate Professor Matthew Anstey (submission 29).
3. In my primary submissions (submission 12), I argued that the questions referred to the Appellate Tribunal are matters arising under the Constitution and should be determined by the Tribunal, if necessary with advice from the House of Bishops on doctrinal matters. Here it is assumed that the Tribunal decides it has jurisdiction in these matters and there are Constitutional questions that the Tribunal will address. These submissions address some substantive matters before the Tribunal.

Procedural concerns

4. The Gitshams' submission at paragraph 1 states:

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.

5. Furthermore, it is reported that in his Presidential Address to Synod on 30 August 2019, Bishop Parkes said, "Justice Croft has served me and the Diocese with great skill and devotion ...". Clearly, Justice Croft has a very close working relationship with Bishop Parkes. The Gitshams respond saying:

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.

6. They also quote Rev David Ould saying (emphasis added):

***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.*

7. I concur with the Gitshams and Rev David Ould that, for the impartiality and integrity of the Appellate Tribunal to be upheld and be seen to be upheld, Justice Croft must recuse himself from the hearing.

Fundamental Declarations

8. Anstey argues at 3.5:

The Fundamental Declarations, and the two Creeds referred to therein, make no statements asserting any moral or ethical absolutes, norms or precepts.

While the Fundamental Declarations contain no *explicit* assertions of "moral or ethical absolutes, norms or precepts", such assertions are present *implicitly*. The Fundamental Declarations affirm "the Christian Faith as professed by the Church of Christ from primitive times", which certainly includes moral dimensions. The first century *Didache*, an important summary of teaching of the Church of Christ in primitive times, is replete with moral instruction.

The Fundamental Declarations affirm the "canonical scriptures of the Old and New Testaments as being the ultimate rule and standard of faith" and they contain extensive moral teaching.

The Fundamental Declarations also commit the Anglican Church of Australia to “obey the commands of Christ” and “teach His doctrine”. Christ’s commands and doctrine include profound teaching on moral and ethical matters.

Anstey’s thesis here is flawed and should be rejected.

9. Anstey, at 3.7, draws a distinction between credal and moral statements.

One can observe that credal statements are of the form, "The Church believes that God is creator of heaven and earth" ... and so forth. They are timeless, universal assertions about the nature of God and God's creation.... In contrast, moral doctrinal statements are of the form ...: "The Church believes that adultery is wrong"....

The matters before the Tribunal go beyond moral questions and deal with ontological issues – the essential natures of God and humans. The Christian Faith includes not only ontological beliefs about God, such as “Jesus Christ is the Son of God”, but also about mankind, such as “men and women are made in God’s image” and “marriage is between a man and a woman”.

The latter is clear from Christ’s teaching on the nature of marriage in Matthew 19:4-5:

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'?

In God’s economy, “marriage” describes only a relationship between a man and a woman. Describing anything else as a “marriage” is a *category mistake*. There are multiple reports of relationships and ceremonies purportedly about “marriage” that are completely miscategorised:

- Melissa Denton purported to “marry” herself in 2018 but she misapplied the word to a bizarre narcissistic ceremony.¹
- Elizabeth Hoad was reported as “marrying” her dog Logan earlier this year.² And she is not alone. Wilhelmina Morgan Callaghan, from Northern Ireland, supposedly “married” her dog Henry in 2009.³ And Lilly Smartelli was reported in January 2019 as dreaming of “marrying” her dog Bernie.⁴ And there are other reports of “marriages” to dogs, cats and frogs.⁵

¹ Melissa Denton, "I married myself and it was truly empowering", *The Telegraph*, UK, 29 April 2019, <https://www.telegraph.co.uk/women/life/married-truly-empowering/>

² Elle Hunt, "Why would a woman marry her dog?", *The Guardian*, 1 August 2019, <https://www.theguardian.com/lifeandstyle/2019/jul/31/why-would-a-woman-marry-her-dog>

³ Rachel Hosie, "Woman who married dog eight years ago says he's 'perfect' for her", *Independent*, 11 October 2017, <https://www.independent.co.uk/life-style/woman-married-dog-8-years-perfect-for-her-marriage-animal-wilhelmina-morgan-callaghan-northern-a7994626.html>

⁴ Vincent M. Mallozzi, "A Woman, Her Best Friend, and a Quick Walk Down the Aisle?", *The New York Times*, 31 January 2019, <https://www.nytimes.com/2019/01/31/fashion/weddings/a-woman-her-best-friend-and-a-quick-walk-down-the-aisle.html>

⁵ "Human–animal marriage", *Wikipedia*, https://en.wikipedia.org/wiki/Human–animal_marriage

- British woman Sharon Tendler supposedly "married" the (male) dolphin Cindy at Dolphin Reef in the southern Israeli port of Eilat in 2005.⁶
- South Sudanese man Charles Tombe found copulating with a goat named Rose was forced to "marry" it.⁷ Balinese teenager Ngurah Alit, 18, caught in the act of intercourse with a cow, was forced to "marry" the animal.⁸ In these cases, the "marriages" were imposed as punishment.

The mere fact that people use the word "marriage" to describe a relationship does not make it a marriage in reality.

Anstey's conclusion at 3.10, that "a doctrine of same-sex marriage is not inconsistent with the Fundamental Declarations" is unsound. The Fundamental Declarations affirm the "Christian Faith as professed by the Church of Christ from primitive times", which includes the ontological assertion that *marriage is between a man and a woman*.

The Ruling Principles

10. Anstey argues at 4.2 that the Book of Common Prayer (BCP) refers only to "heterosexual marriage":

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.

Here, Anstey makes the false assumption that *marriage* is capable of qualification, as either "heterosexual marriage" or "homosexual marriage" – or, for that matter, "self-marriage", "human-animal marriage" or perhaps other varieties of "marriage". This fallacy is concomitant with his earlier category mistake.

The BCP defines marriage clearly in the preface of The Form of Solemnization of Matrimony (**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 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*

⁶ British woman weds dolphin, Sydney Morning Herald, 30 December 2005, <https://www.smh.com.au/world/british-woman-weds-dolphin-20051230-gdmpf8.html>

⁷ "'Man marries goat' captivates millions", *The Telegraph*, 3 May 2007, <https://www.telegraph.co.uk/news/worldnews/1550479/Man-marries-goat-captivates-millions.html>

⁸ "Teenager passes out marrying cow he had sex with", *Jakarta Globe* (APSN), 11 June 2010, <https://www.asia-pacific-solidarity.net/news/2010-06-11/teenager-passes-out-marrying-cow-he-had-sex.html>

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...

This definition sets clear bounds on the meaning and nature of marriage, including that it is as instituted by God in the beginning: "a man shall leave his father and his mother and hold fast to his wife, and they shall become one flesh."⁹

Furthermore, the BCP acknowledges the existence of "carnal lusts and appetites" that are incompatible with marriage, which would include sexual immorality, adultery and homosexual practice.¹⁰ It would be more reasonable to assume that the writers of the BCP would be aware of such vices, not (as Anstey assumes) that they would have been ignorant of such things.

The question of same-sex marriage

11. Anstey, at 5.1, says that "the central theological issue before the Tribunal is same-sex marriage, not the blessing of such". At 5.3 he makes the following assertion (**emphasis added**):

*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, psychological, and other relevant scientific research**, sources of knowledge and wisdom that have always been deeply influential in the Church's determination of its views on moral matters.*

This assertion about *medical, psychological, and other relevant scientific research* should not go unchallenged.

12. The **medical** source cited by Anstey is the *AMA Position Statement on Marriage Equality 2017*.¹¹ Firstly, it must be recognised that the AMA represents less than 30% of medical practitioners in Australia.¹² It is not necessarily representative of medical opinion in Australia. And it is more of a political statement than a medical one.

The central medical issue with men who have sex with men is that anal intercourse involves numerous medical risks:

There are a number of health risks with anal sex, and anal intercourse is the riskiest form of sexual activity for several reasons, including the following:

⁹ Genesis 2:24.

¹⁰ 1 Corinthians 6:9-10.

¹¹ *Position Statement on Marriage Equality 2017*, AMA, 2017, https://ama.com.au/sites/default/files/documents/Marriage%20Equality%20-%202017%20-%20AMA%20position%20statement_0.pdf

¹² "Recently The Australian newspaper made the surprising claim that only 30% of medical practitioners are AMA members", *Medical Republic*, (undated), <http://medicalrepublic.com.au/low-can-ama-go/14216>

- **The anus lacks the natural lubrication the vagina has.** Penetration can tear the tissue inside the anus, allowing bacteria and viruses to enter the bloodstream. This can result in the spread of sexually transmitted infections including HIV. Studies have suggested that anal exposure to HIV poses 30 times more risk for the receptive partner than vaginal exposure. Exposure to the human papillomavirus (HPV) may also lead to the development of anal warts and anal cancer. Using lubricants can help some, but doesn't completely prevent tearing.
- **The tissue inside the anus is not as well protected as the skin outside the anus.** Our external tissue has layers of dead cells that serve as a protective barrier against infection. The tissue inside the anus does not have this natural protection, which leaves it vulnerable to tearing and the spread of infection.
- **The anus was designed to hold in feces.** The anus is surrounded with a ring-like muscle, called the anal sphincter, which tightens after we defecate. When the muscle is tight, anal penetration can be painful and difficult. Repetitive anal sex may lead to weakening of the anal sphincter, making it difficult to hold in feces until you can get to the toilet. However, Kegel exercises to strengthen the sphincter may help prevent this problem or correct it.
- **The anus is full of bacteria.** Even if both partners do not have a sexually-transmitted infection or disease, bacteria normally in the anus can potentially infect the giving partner. Practicing vaginal sex after anal sex can also lead to vaginal and urinary tract infections.¹³

The Royal Australian College of General Practitioners provides the following information in the medical risks:

Men who have sex with men are at increased likelihood of acquiring a STI and/or HIV infection. Between 2000 and 2004, 86% of new HIV infections in Australia were attributed to male homosexual contact. In New South Wales in 2005, 92% of gonorrhoea cases were isolated from men and 38% were rectal or pharyngeal isolates. Syphilis rates increased more than 10 fold from 1999 to 2003 in NSW, with most of the increase occurring in homosexual men.¹⁴

It has long been known that contact with faeces is a health risk. The development of public sewer systems in the late 1800s, eliminating faecal contamination of water supplies, was largely responsible for a major improvement in public health. As every child should know, washing one's hands after going to the toilet is important. Anal coitus ignores good hygiene.

¹³ "Anal Sex Safety and Health Concerns", WebMD, (undated), <https://www.webmd.com/sex/anal-sex-health-concerns>

¹⁴ James Baber, "Men who have sex with men: A management approach for GPs", *Australian Family Physician*, Vol. 35, No. 10, October 2006, <https://www.racgp.org.au/afpbackissues/2006/200610/20061004baber.pdf>

The apostle Paul knew well of the consequences when he wrote of “men committing shameless acts with men and receiving in themselves the due penalty for their error.”¹⁵

13. The *psychological* source cited by Anstey is an unattributed comment on a website of the American Psychological Association that cites no evidence whatsoever.¹⁶ As such it cannot be considered authoritative.

Furthermore, the American Psychological Association is a highly politicised and partisan body that is known for making controversial statements. For example, its statement on the treatment of men and boys was strongly criticised by multiple scholars.¹⁷

The comment quoted by Anstey (in footnote 11) includes the questionable assertion that “Research has found no inherent association between [lesbian, gay or bisexual orientations] and psychopathology”. Evidence is available that:

*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.*¹⁸

The quoted comment also includes the assertion that “both heterosexual behavior and homosexual behavior are normal aspects of human sexuality.” This begs the question of what is “normal”. The mere fact that homosexual behaviour has been observed “in many different cultures and historical eras”, is no different from observing that murder, adultery, bestiality and paedophilia occur across cultures and historical eras. The occurrence of a behaviour does not make it a *moral good*. Anstey’s assertion, that this comment supports his claim that “same-sex marriage is a *moral good*”, is a non sequitur.

14. The source on **other relevant scientific research** cited by Anstey includes the claim that “There is now an extensive body of research on the psychological well-being of children and adolescents reared in sexual minority parent families.”¹⁹

¹⁵ Romans 1:27.

¹⁶ “Sexual Orientation & Homosexuality: Is homosexuality a mental disorder?”, American Psychological Association, <https://www.apa.org/topics/lgbt/orientation>

¹⁷ “Twelve Scholars Respond to the APA’s Guidance for Treating Men and Boys”, *Quillette Magazine*, 4 February 2019, <https://quillette.com/2019/02/04/psychologists-respond-to-the-apas-guidance-for-treating-men-and-boys/>

¹⁸ Lawrence S. Mayer and Paul R. McHugh, “Sexuality and Gender: Findings from the Biological, Psychological, and Social Sciences”, *The New Atlantis*, Fall 2016, <https://www.thenewatlantis.com/publications/introduction-sexuality-and-gender>

¹⁹ Nanette Gartrell, et al., “‘We Were Among the First Non-traditional Families’: Thematic Perceptions of Lesbian Parenting After 25 Years”, *Frontiers in Psychology*, 25 October 2019, <https://www.frontiersin.org/articles/10.3389/fpsyg.2019.02414/full>

The principal author of the paper cited by Anstey is Nanette Gartrell, who is described as an American psychiatrist, researcher and lesbian activist. She lives in San Francisco with her lesbian partner.²⁰ Her personal life immediately raises questions about objectivity.

The study involved 131 prospective lesbian mothers who had volunteered (between 1986 and 1992) to participate in the U.S. National Longitudinal Family Study (NLLFS).²¹ The fact that the subjects *volunteered* to participate means that the study could be subject to *volunteer bias*, and render the results invalid.²²

The methodology used in the study is seriously flawed for several reasons. Firstly, the study was based on participants in the study *self-reporting*, which is a known source of bias. Secondly, the questions asked were subjective: asking about the participant's experiences related to being a parent of a non-traditional family. Subjective questions are at greater risk than objective questions of suffering from *confirmation bias*, which "is the tendency to search for, interpret, favour, and recall information in a way that confirms or strengthens one's prior personal beliefs or hypotheses."²³

Furthermore, the questions and the study relate only to the experiences of the parents. The children were not consulted, and their perspectives may be quite different. While the Gartrell refers in the introduction to "research on the psychological well-being of children", this study does not address that question.

In short, it would be unsafe to rely on the results of this study: it risks *volunteer bias*, *self-reporting bias* and *confirmation bias*, and it fails to consult the children raised in those contexts. The study provides no support for the claimed *moral good* of same-sex-parent families – another non sequitur from Anstey.

15. Evidence of how children raised by same-sex parents are affected in early adulthood is most likely to be reliable with well-designed research methodology. For example, studies with large, random samples of children assessed in early adulthood using objective measures. Fortunately, several such studies are available.

Professor Paul Sullins used data from a longitudinal study over 13 years of a random sample of over 15,000 Americans interviewed at average ages of 15, 22 and 28 years. The factors studied included depression, suicide ideation, anxiety and parental child abuse. Compared with opposite-sex parents, children who had been raised with same-sex parents had "higher

²⁰ "Nanette Gartrell", *Wikipedia*, https://en.wikipedia.org/wiki/Nanette_Gartrell

²¹ Nanette Gartrell, "US National Longitudinal Lesbian Family Study: Psychological Adjustment of 17-Year-Old Adolescents", *Pediatrics*, 126(1):28-36, July 2010, https://www.researchgate.net/publication/44655831_US_National_Longitudinal_Lesbian_Family_Study_Psychological_Adjustment_of_17-Year-Old_Adolescents

²² "Volunteer bias", *Encyclopedia of Research Design*, 2010, <https://methods.sagepub.com/reference/encyc-of-research-design/n492.xml>

²³ "Confirmation bias", *Wikipedia*, https://en.wikipedia.org/wiki/Confirmation_bias

depression risk in early adulthood, coupled with a more frequent history of abuse victimization, parental distance, and obesity.”²⁴

Professor Mark Regnerus, as lead investigator of the New Family Structures Study (NFSS), surveyed 2,988 young adults in 2011 in order to collect reliable, nationally representative data about children from various family origins. Adults raised at least in part by same-sex couples did worse on over half the 40 measures tested, including public welfare, lower levels of employment, poorer mental and physical health, poorer relationship quality with current partner, and higher levels of smoking and criminality.²⁵

These (and other) well-designed studies of the outcomes in early adulthood for children raised in different contexts show clearly that those raised by same-sex parents have poorer outcomes than those raised opposite-sex parents.

16. The claim by Anstey that "proponents of same-sex marriage ... believe that the view that same-sex marriage is a moral good is in accord with leading medical, psychological, and other relevant scientific research" is unfounded, as shown above (paragraphs 11 to 15). The studies cited in support of that belief either do not address the question (and are therefore irrelevant) or are poor quality studies whose conclusions are dubious.

On the contrary, sound studies with well-designed methodology provide robust evidence that male-female marriages provide the best context for good physical and psychological health of the couple and their children, and the best outcomes for their children in early adulthood.

Scripture and same-sex marriage

17. Anstey states at 6.15 that he follows:

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.

But the scholars quoted then advocate views that explicitly contradict this biblical teaching. For example (**emphasis added**):

*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... We appeal explicitly to the weight of our own experience...*

²⁴ D Paul Sullins, "Invisible Victims-Delayed Onset Depression among Adults with Same-Sex Parents", *Hindawi*, volume 2016, <https://www.hindawi.com/journals/drt/2016/2410392/>

²⁵ Mark Regnerus, "How different are the adult children of parents who have same-sex relationships? Findings from the New Family Structures Study", *Social Science Research*, Vol 41, Issue 4, July 2012, pp 752-770, <https://www.sciencedirect.com/science/article/abs/pii/S0049089X12000610?via%3Dihub>

By implication, Anstey rejects the straightforward commands of Scripture in favour of personal experience.

This appears to be an explicit rejection of the Fundamental Declarations of the Anglican Church of Australia, specifically rejecting:

- *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.*

Anstey's proposed basis for determining the Anglican Church's position on same-sex marriage should be rejected as a flagrant repudiation of the Fundamental Declarations of the Anglican Church of Australia.

18. Anstey states at 6.20 that:

the doctrinal moral argument ... 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.

The claim that Scripture is *prima facie* more proslavery than antislavery is a spurious. Biblical teaching on slavery could be more accurately summarised as being antislavery in principle but tolerant of limited humane slavery in practice. Scripture is nowhere proslavery.

A Jewish perspective on slavery in the Old Testament is provided by Rabbi Benjamin Scolnic:

Leviticus says that there is no such thing as an Israelite slave. Deuteronomy understands that there will be slaves and they must be treated well until they will be released. Combining the laws of the Covenant Code with the antipathy for the enslavement of an Israelite in Leviticus, Deuteronomy forged a compromise that was workable for its time.²⁶

Peter Williams, Warden of Tyndale House, explains that:

Often the Old Testament Law is a matter of permitting or regulating something, rather than saying that it is good...

Regarding New Testament teaching on slavery, he adds:

Christians could not change the legal system. A slave rebellion would have led to the execution of the rebels. There were also legal restrictions concerning the number of slaves who could be freed and freeing them early (before the age of 30) could bar them from becoming Roman citizens (Lex Fufia Caninia and Lex Aelia Sentia).

Commanding Christians to free their slaves would not therefore have been legal, nor would it have worked as, by state law, some of those slaves would still not have been free. But

²⁶ Benjamin Scolnic, "Slavery in the Bible", *Conservative Judaism*, Volume 51:3, Spring 1999, <https://www.myjewishlearning.com/article/biblical-slavery/>

Christians were commanded to love others as Christ loved us. That meant that people could no longer be treated as slaves...²⁷

Moral consideration of “same-sex marriage” is *not* analogous to that of slavery. Same-sex genital behaviour is not supported, or even tolerated, anywhere in Scripture – it is uniformly and consistently condemned as contrary to God’s will.

19. At 6.20, Anstey also asserts that (**emphasis added**):

*The approach ... the Church has always taken with moral issues, namely, reasoning out a morally defensible position ... **shaped by the testimony of those on the “inside” of the question under discussion.***

But who are the people on the “inside” of the homosexuality issue? We should be listening to those whose experiences are like that reported by the apostle Paul in his letter the church in Corinth (**emphasis added**):

*Do not be deceived: neither the sexually immoral, nor idolaters, nor adulterers, nor men who practice 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.***²⁸

Several recent cases are reported in my first submission at 57. These are cases of people who had previously engaged in homosexual behaviour but ceased – and some were washed, sanctified and justified in the name of the Lord Jesus.²⁹ For example:

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.³⁰

²⁷ Peter J. Williams, "Does the Bible Support Slavery?", *BeThinking*, <https://www.bethinking.org/bible/does-the-bible-support-slavery>

²⁸ 1 Corinthians 6:9-11.

²⁹ David Phillips, "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)", 11 December 2019, paragraph 57.

³⁰ Ben Smith, "James Parker: ‘From Gay-Activist to Husband and Father’", *Catholic Outlook*, 19 May 2016.

Lived experience and same-sex marriage

20. Anstey states at 7.1 and 7.2 that:

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.

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.

Anstey's argument is that the inclusion of Gentiles in the church involved a rejection (or re-interpretation) of Scripture and Christ's teaching in favour of lived human experience. However, the change in Christian practice is better understood as a rejection of human tradition in favour of a full understanding of Scripture and Christ's teaching.

The inclusion of Gentiles in God's plan for the world is clear throughout Scripture, as a few examples illustrate:

- **Abram** (Abraham) was told by the Lord: "I will bless those who bless you, and him who dishonours you I will curse, and in you all the families of the earth [including Gentiles] shall be blessed." (Genesis 12:3)
- **Isaiah** was told by the Lord: "I will make you as a light for the nations (Gentiles), that my salvation may reach to the end of the earth." (Isaiah 49:6)
- **A Roman centurion** (Gentile) who sought healing for his servant was commended by Jesus for his faith: "Truly, I tell you, with no one in Israel have I found such faith. I tell you, many will come from east and west and recline at table with Abraham, Isaac and Jacob in the kingdom of heaven..." (Matthew 8:10-11)
- **A Canaanite** (Gentile) woman's daughter was healed by Jesus, who commended her for her faith: "O woman, great is your faith! Be it done for you as you desire." (Matthew 15:28)
- **Jesus**, shortly before his ascension, told the apostles: "You will receive power when the Holy Spirit has come upon you, and you will be my witnesses in Jerusalem and in all Judea and Samaria, and to the end of the earth [including Gentiles]." (Acts 1:8)

Gentile inclusion was foretold in the Old Testament and was both taught and practised by Jesus. The disciples, however, were slow to understand and accommodate God's vision for the Gentiles. Through conversion of Cornelius (Acts 10-15), the Holy Spirit guided Peter to embrace God's vision for the Gentiles.

Contrary to Anstey's thesis, the inclusion of the Gentiles in the church does not provide an example of reinterpreting Scripture; rather the conversion of Cornelius provoked the apostles to recognise what was already taught in Scripture and by Jesus.

21. The proper relationship between Scripture and human experience is best understood from the example and teaching of the Lord Jesus Christ.

- During his temptation in the wilderness, Jesus consistently rebuked Satan by quoting Scripture. (Luke 4:1-13)
- During the sermon on the mount, Jesus emphasised the enduring significance of the Scriptures in the lives of his disciples. He says of the commandments therein: "Whoever does them and teaches them will be called great in the kingdom of heaven." (Matthew 5:19)
- In response to a question from the Sadducees, Jesus criticized them, saying: "You are wrong, because you know neither the Scriptures nor the power of God." (Matthew 22:29)

The model set and taught by Jesus Christ is that human experience should be judged by Scripture, not vice versa.

22. Anstey, at 7.4, says:

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.

He then mentions some theologians who have been influenced by life experiences to change their interpretation of Scripture.

Making biblical interpretation subject to human life experiences can be dangerous and has led to some very undesirable outcomes. Perhaps the most prominent historical example is the Dutch Reformed Church's development of a theology supporting apartheid in South Africa.

The Dutch Reformed Church's theology was developed during British rule of the Cape Colony from 1806. Prior to that the Cape had been a Dutch settlement established in 1652 by the Dutch East India Company, most of whose employees were members of the Dutch Reformed Church. The new British rule was required by the 1806 Cape Articles of Capitulation to respect the previous Roman Dutch Law, which was quite separate from English Common Law.³¹

Over the following century or so, numerous laws were passed to control slaves, later indentured labourers, limiting their employment, location, movement, ownership of land, education and parliamentary representation. In 1948, the newly elected National Party responded to a large influx of black migrant workers by strengthening laws for racial separation that became known as apartheid (aparthood).³²

A few years earlier, in 1944, Afrikaans poet and Bible translator Prof J D du Toit addressed the National People's Congress defending racial segregation on biblical grounds. He commended a pamphlet by Rev J G Strydom, copies of which were widely distributed in Dutch Reformed Churches. It concluded:

³¹ "Apartheid: Precursors", *Wikipedia*, <https://en.wikipedia.org/wiki/Apartheid#Precursors>

³² *Ibid.*

*that the white man's survival can only be guaranteed if he ... maintains the strict policy of the old folks of strict apartheid in social life, and not sink to the level of the barbarian, and if mixed marriages are prohibited and interracial intercourse is severely punished.*³³

The lived experience of the Dutch Reformed Church was of more than a century of increasingly restrictive government laws enforcing racial separation, to manage the increasing numbers of black migrant workers. The Church's fear was existential: white man's survival. Their response was to reinterpret Scripture to support government policy.

As we now know, the policy of South African government's policy of apartheid was unjust and was overturned. And the Dutch Reformed Church has repudiated its former support for apartheid.

This episode illustrates the pressure God's people have experienced throughout history to conform to the ways of the world. Long ago St Paul exhorted the church in Rome:

*Do not be conformed to this world, but be transformed by the renewal of your mind, that by testing you may discern what is the will of God, what is good and acceptable and perfect.*³⁴

Allowing human experience to dominate the interpretation of Scripture exposes the church to the risk of being conformed to the world and thereby to syncretism and apostasy. This should not be allowed to happen. Instead, Scripture should be used to judge whether the values of the world are acceptable to God or not.

Theological defence of same-sex marriage

23. At 8.1 Anstey asserts that:

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.

Contrary to Anstey's assertion, there are several moral objections to so called "same-sex marriage", including particular sins being committed.

23.1. Firstly, there is an *ontological* objection. As argued above at paragraph 9, in God's created order, marriage *essentially* (or ontologically) describes only a relationship between a man and a woman. So-called "same-sex marriage" is a sham. Honouring a sham is offensive to God.

Honouring "same-sex marriage" is analogous to honouring idols made of wood, metal or stone. In reality, they are nothing. Honouring them is offensive to God and contrary to his commandments in Exodus 20 (and elsewhere).

³³ Robert R Vosloo, "The Bible and the justification of apartheid in Reformed circles in the 1940's in South Africa: Some historical, hermeneutical and theological remarks", Stellenbosch Theological Journal, Vol 1, No 2, 2015, http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S2413-94672015000200011

³⁴ Romans 12:2.

- 23.2. Secondly, there is a *teleological* objection. In God's created order, the primary purpose of marriage is procreational – as affirmed in the preface of The Form of Solemnization of Matrimony in the Book of Common Prayer (BCP):

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...

Here, the BCP is reflecting God's first command to humans:

Be fruitful and multiply and fill the earth and subdue it... (Genesis 1:28)

Since same-sex coital relations are incapable of reproduction, honouring such relations is an explicit rejection of a central purpose of God for mankind and, consequently, a sin that is offensive to him.

- 23.3. Thirdly, there is an *explicitly moral* objection. Anstey acknowledges this in his submission at paragraph 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.

While Anstey then proceeds to argue that, despite the clear biblical proscription of homosexual practice, such behaviour should not be regarded as sinful. The fallacy of his conclusion is set out above in paragraphs 17 to 19 above.

24. At 8.2 Anstey poses and answers a series of questions:

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 lifelong, 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.

- 24.1. Anstey's first question ("What sin for instance is committed arising from their *sexual union* as gay people?") makes specific reference to "gay people", as if they are a different subspecies of *homo sapiens*. Such a view arises from the idea that homosexuals are "born that way", that there is a "gay gene" and that sexual orientation is immutable. This idea has become a modern myth, widely believed in academic and media circles. However, the evidence is otherwise and is set out in my primary submission at paragraphs 50 to 58 and briefly summarised here.

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.*³⁵

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.³⁶

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.

Studies in US and New Zealand show that 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.

Personal stories of some men and women who have left a homosexual lifestyle behind provide some insights into the fluidity of sexual attraction are reported in my primary submission at paragraph 57.

- 24.2. It follows that Anstey's first question ("What sin for instance is committed arising from their *sexual union* as gay people?") is wrongly framed. In God's sight, all people are made in his image. Some people are same-sex-attracted, but it is important to distinguish between same-sex *attraction, identity* and *activity* – as elaborated in my primary submission at 50.

The critical question regarding immoral sexual temptation, whether same-sex or opposite-sex, is how one responds to the temptation. We are called to reject temptation, as Jesus did in the wilderness, not to act on it through immoral sexual congress.

- 24.3. Anstey's second question ("When two people of the same gender give their lives to one another in lifelong, covenantal fidelity and love, what specific sin is enacted?") The question here is really whether engaging in immoral sexual activity becomes moral if the relationship is expressed "in lifelong, covenantal fidelity and love".

³⁵ P S Bearman and H Bruckner, 2002, "Opposite-sex twins and adolescent same-sex attraction", *American Journal of Sociology*, Vol 107, pp 1179–1205.

³⁶ Neil E and Briar K Whitehead, 2010, *My Genes Made Me Do It! A Scientific Look at Sexual Orientation*, (Lower Hutt, NZ, Whitehead Associates), <http://www.mygenes.co.nz>

Consider instead the question of incest. If an incestuous sexual relationship is immoral and sinful, does it become moral and acceptable if expressed “in lifelong, covenantal fidelity and love”? The answer is clearly, no!

The answer to Anstey’s second question is that the specific sin is same-sex coitus, which is condemned in Scripture as a sin. The surrounding circumstances do not diminish the primary sin.

- 24.4. Anstey’s third and fourth questions (“What harm is being done? What evil is being propagated?”) are partly answered in paragraphs 12-15 above. Some significant medical risks of anal coitus are listed at 12. Psychological problems prevalent among homosexuals are given at 13. The developmental risks for children raised by same-sex couples are documented at 14 and 15. Some additional harms are identified below.

Homosexual men account for the majority of new cases of sexually transmitted diseases in developed countries.³⁷ Homosexual men are at increased risk of contracting HIV, syphilis,³⁸ human papillomavirus,³⁹ hepatitis A, B and C,⁴⁰ gonorrhoea⁴¹ and other sexually transmitted infections.

Lesbians are twice as likely as heterosexual women to be obese,⁴² making them at higher risk of heart disease.⁴³ Homosexual men are twice as likely to develop cancer as heterosexual men and are 1.9 times more likely to have it diagnosed ten years earlier.⁴⁴ Lesbians also have the highest number of risk factors for many of the gynaecological cancers.⁴⁵ Older homosexual and bisexual men aged 50 to 70 years reported higher rates of high blood pressure, diabetes and physical disability than their heterosexual counterparts.⁴⁶

³⁷ Maron, DJ, “*Sexually Transmitted Diseases*, American Society of Colon & Rectal Surgeons, 2012.

³⁸ Centers for Disease Control and Prevention, *Syphilis – CDC Fact Sheet*, 16 Sep 2012.

³⁹ Zmuda, RA, *Rising Rates of Anal Cancer for Gay Men*, Cancer Page, 2009: www.cancerpage.com

⁴⁰ Winn, RJ, *Ten things gay men should discuss with their healthcare providers*, Gay & Lesbian Medical Association (GLMA), 2012: <http://glma.org>

⁴¹ “Mortality and Morbidity Weekly Report: Increases in unsafe sex and rectal gonorrhoea among men who have sex with men – San Francisco, California, 1994- 1997”, *Centers for Disease Control and Prevention*, 48(03), 29 Jan 1999, pp 45-48.

⁴² Boehmer, U, *et al.*, “Overweight and obesity in sexual-minority women: Evidence from population-based data”, *American Journal of Public Health*, 97(6), Jun 2007, pp 1134-1140.

⁴³ Poteat, T, *Ten things lesbians should discuss with their healthcare providers*, Gay & Lesbian Medical Association (GLMA), 2012: <http://glma.org>

⁴⁴ AFP, “Gay men report higher cancer rates: US study”, *Sydney Morning Herald*, 10 May 2011, Breaking News World.

⁴⁵ Poteat, T, 2012, *op. cit.*

⁴⁶ Rabin, RC, “Disparities: illness more prevalent among older gay adults”, *New York Times*, 5 Apr 2011, p D7.

Many of these health problems are linked with behaviour characteristic of the homosexual lifestyle, such as increased drug, alcohol and tobacco use.⁴⁷ A 1997 Canadian study found that life expectancy at age 20 for homosexual and bisexual men was eight to 20 years less than the average life expectancy for other men.⁴⁸

Same-sex attracted people tend to use tobacco, alcohol and drugs as a coping mechanism for mental health problems, which are significantly greater in their community. Domestic violence is also rife.⁴⁹ Domestic violence among homosexual men is nearly double that in the heterosexual population,⁵⁰ while verbal, emotional or physical abuse within lesbian relationships is estimated to range from 11% to more than 75%.⁵¹

Homosexual men are at an increased risk of developing eating disorders such as anorexia and bulimia,⁵² possibly because of the strong emphasis the homosexual community places on physical appearance. Depression and anxiety affect homosexual and bisexual men and lesbians more than the general population.⁵³ Older homosexual and bisexual men were 45% more likely to report psychological distress than equivalent heterosexual men.⁵⁴

Other studies have shown that there are more suicides and attempted suicides among homosexual individuals than heterosexual. A Denmark study found that completed suicides are nearly eight times more likely among homosexual men in registered domestic partnerships than for married men, and nearly two times more likely than men who had never married.⁵⁵

It is sometimes argued that homosexual mental ill-health including suicide is caused by discrimination and stigma, but the facts do not support this conjecture. In countries like the Netherlands and New Zealand where there is high acceptance of sexual diversity, the rates of homosexual mental ill-health are as high as in countries where the stigma is strong.⁵⁶

⁴⁷ "Higher use of drugs, alcohol and tobacco in gay, lesbian and bisexual population", *Massey News*, Massey University, Palmerston North, 1 July 2007.

⁴⁸ Hogg, R, *et al.*, "Modelling the impact of HIV disease on mortality in gay and bisexual men", *International Journal of Epidemiology*, 26(2), 1997, pp 657-661.

⁴⁹ Greenwood GL, *et al.*, "Battering Victimization among a probability-based sample of men who have sex with men", *American Journal of Public Health*, 92(12), Dec 2002, pp 1964-1969.

⁵⁰ Island, D & Letellier, P, *Men Who Beat the Men Who Love Them: Battered Gay Men and Domestic Violence*, Haworth Press, New York, 1991, p 14.

⁵¹ Cited in CM Renzetti, "Violence and Abuse in Lesbian Relationships", in RK Burgen (ed.), *Issues in Intimate Violence*, Sage Publications, Michigan, 1998, pp 117-127.

⁵² Columbia University's Mailman School of Public Health, *Gay men have higher prevalence of eating disorders, says Mailman School of Public Health study*, 13 Apr 2007: www.eurekalert.org

⁵³ Meyer, IH, "Prejudice, Social Stress and Mental Health in Lesbian, Gay and Bisexual Populations: Conceptual Issues and Research Evidence", *Psychological Bulletin*, 129(5), Sep 2003, pp 674-697.

⁵⁴ Rabin, RC, 2011, *op. cit.*

⁵⁵ Mathy, RM, *et al.*, "The association between relationship markers of sexual orientation and suicide: Denmark, 1990-2001", *Social Psychiatry and Psychiatric Epidemiology*, 46(2), 2011, pp 111-117.

⁵⁶ Whitehead, Neil, "Homosexuality and Co-Morbidities: Research and Therapeutic Implications", *Journal of Human Sexuality*, Vol 2, 2010, pp 124-175.

In summary, male homosexual practice, usually involving anal intercourse, is inherently unhygienic due to contact with bacteria-laden faeces. It is associated with serious health risks including sexually transmitted infections and anal cancer. Condom use lowers these risks but does not eliminate them. Many lesbians also engage in unhygienic practices and suffer negative health outcomes.

Anstey's own answer to his question about harm – "There is none." – is ill-informed and clearly false.

25. At 8.4, Anstey makes the following appeal:

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 ... fails to meet any "standards of excellence" in its theological formulation.

A compelling, coherent theological account of the sinfulness of same-sex marriage must be accompanied by clarification of the nature and purpose of marriage in God's plan for the world. Those experiencing same-sex attraction should be encouraged to see that is not immutable but fluid. Such people may find encouragement from personal stories of men and women who have left the homosexual lifestyle, such as those quoted in my primary submission at paragraph 57. A brief summary follows:

- **Michael Glatze**, founder of Young Gay America and editor of its magazine, said: "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."⁵⁷
- **Charlene Cothran** had been a lesbian activist for three decades. 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."⁵⁸
- **Luca di Tolve** was once a young homosexual man but is now a happily married father. Luca came to understand that his emotionally detached father and obsessive mother had unintentionally created confusion about his sexual identity.⁵⁹
- **James Parker** lived a promiscuous gay lifestyle – until he met a man who became his steady partner. James discovered an attraction to the opposite sex, married and became a father. "I've lived the committed homosexual and committed heterosexual partnerships – they're radically different," he says.⁶⁰

⁵⁷ Art Moore, "'Gay'-rights leader quits homosexuality", *WND*, 3 July 2007.

⁵⁸ Amy Tracy, "The Rebirth of Venus", *Christianity Today*, 23 March 2007.

⁵⁹ Michael Cook, "Luca era gay", *Mercatornet*, 11 October 2012.

⁶⁰ Ben Smith, "James Parker: 'From Gay-Activist to Husband and Father'", *Catholic Outlook*, 19 May 2016.

- **Rosaria Butterfield** was a tenured English professor at Syracuse University, specialising in Queer Theory, a postmodern form of gay and lesbian studies. 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.⁶¹

26. At 8.6, Anstey observes that:

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.

There is general agreement that sexual attraction, whether same-sex or opposite-sex, can be a form of temptation but is not in itself sinful. If the attraction is embraced and becomes a desire or lust for a sinful action – such as adultery, fornication, homosexual activity or paedophilia – then it becomes sinful.

Desires do *not* become good merely because they “pertain to the wellbeing and flourishing of another person”. Adultery, incest or paedophilia cannot somehow become “good” if they seek the wellbeing of another. Desires become good if the desired action is itself good. Since homosexual activity is sinful, the desire for such activity is also sinful.

Conclusion

27. Contrary to Anstey, marriage was ordained by God from the beginning as the exclusive enduring union of a man and a woman, for their mutual benefit, for the procreation and raising of children and for the development of a stable and productive society. Same-sex unions are condemned in Scripture as contrary to the intention and purpose of God. They are prone to medical and psychological problems and provide a poor context for raising children.
28. Homosexual orientation is not determined genetically and is not immutable but fluid. There are many personal examples of people who have left a homosexual lifestyle and embraced either celibacy or marriage and family life.
29. The conclusion reached by Anstey that “enactment of ... same-sex love must necessarily be deemed to be good, wholesome, and, indeed, Christ-like” is completely unsupportable. It is based on false assumptions, faulty reasoning, irrelevant references and rejection of Scripture. His conclusions should be rejected as contrary to the Fundamental Declarations and Ruling Principles of the Anglican Church of Australia.

⁶¹ 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.

30. The 1998 Lambeth Resolution 1.10 (reproduced below) provides helpful guidance on biblical teaching about marriage and the pastoral care of those who experience same-sex attraction.

The 1998 Lambeth Conference:

- *Commends to the Church the subsection report on human sexuality;*
- *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;*
- *recognises that there are among us persons who experience themselves as having a homosexual orientation. Many of these are members of the Church and are seeking the pastoral care, moral direction of the Church, and God's transforming power for the living of their lives and the ordering of relationships. We commit ourselves to listen to the experience of homosexual persons and we wish to assure them that they are loved by God and that all baptised, believing and faithful persons, regardless of sexual orientation, are full members of the Body of Christ;*
- *While rejecting homosexual practice as incompatible with Scripture, calls on all our people to minister pastorally and sensitively to all irrespective of sexual orientation and to condemn irrational fear of homosexuals, violence within marriage and any trivialisation and commercialisation of sex;*
- *Cannot advise the legitimising or blessing of same sex unions nor ordaining those involved in same gender unions;*
- *Requests the Primates and the ACC to establish a means of monitoring the work done on the subject of human sexuality in the Communion and to share statements and resources among us;*
- *Notes the significance of the Kuala Lumpur Statement on Human Sexuality and the concerns expressed in resolutions IV.26, V.1, V.10, V.23 and V.35 on the authority of Scripture in matters of marriage and sexuality and asks the Primates and the ACC to include them in their monitoring process.*

FURTHER SUBMISSION TO THE APPELLATE TRIBUNAL

In the matter of Questions referred by the Primate under section 63(1) of the Constitution on 5 September and 21 October 2019 (the "References")

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GENERAL SYNOD

R3

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 made its primary submission to the Appellate Tribunal on 9 December 2019. Ridley College now makes the following further submission:

1. Ridley College has had the opportunity to review and consider the proposed answers to the questions the subject of the References and wishes to clarify its own position in response.
2. Accordingly, Ridley College submits that the questions the subject of the References should be answered as follows:

Reference dated 5 September 2019

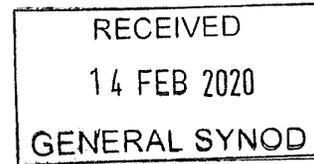
<i>Question</i>	<i>Response</i>
Question 1:	The Regulations are inconsistent with the Fundamental Declarations and Ruling Principles.
Question 2:	The Regulations are not validly made.

Reference dated 21 October 2019

<i>Question</i>	<i>Response</i>
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.

3. Ridley College requests the right to make further written submissions in accordance with any amended timetable (if any) determined by the Tribunal.

14 February 2020



R4

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*

Secondary Submissions of the Synod of the Diocese of Sydney

Introduction

1. These secondary submissions of the Synod of the Diocese of Sydney (**Sydney**) reply to certain primary submissions made 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, and
 - (b) the questions posed by 41 members of the General Synod regarding the Regulations in the reference dated 21 October 2019.
2. Collectively, these will be referred to as "**the References**" in this secondary submission.
3. We submit that the questions posed in the References should be answered by the Appellate Tribunal in the manner set out in Sydney's primary submission.

The primary submissions

4. Sydney notes that 33 primary submissions were received in relation to the References (excluding the earlier primary submissions made by Wangaratta which were addressed in Sydney's primary submissions).
5. Four of these submissions argue that the Regulations are a valid exercise of legislative power by the Synod of the Diocese of Wangaratta. These submissions are from the Archbishop of Perth, the Rev Associate Professor Matthew Anstey, Equal Voices Ltd and the Diocese of Newcastle.

6. There are four main arguments in these submissions (and also within the primary submissions of the Diocese of Wangaratta) –
- (a) The references do not involve a question arising under the Constitution and merely concern diocesan legislation for the order and good government of the Church in the Diocese by authority of a Canon of the General Synod.
 - (b) The Church's teaching on marriage is not a doctrine for the purposes of the Constitution as it is not a teaching on a question of faith.
 - (c) A civil marriage under the *Marriage Act 1961* is in a different category to marriages that are solemnised according to Anglican rites and our doctrine of marriage has no bearing on civil marriages.
 - (d) The act of blessing a civil marriage or the persons in a civil marriage is such that it does not contravene the Church's doctrine of marriage.
7. Sydney's primary submissions have already addressed the matters in (b), (c) and (d) in some detail. These secondary submissions supplement the arguments in Sydney's primary submission in respect to the matter in (a).

Section 4 is a broad constitutional limitation on the legislative power of a diocesan synod

8. The Archbishop of Perth argues at paragraphs 11 and 12 of her submission that –
- (a) there is no provision in the existing formularies of the Church for the blessing of a couple other than in the course of an authorised marriage service,
 - (b) the Regulations therefore “provide for something that is not provided in” the Book of Common Prayer (**BCP**) or the Thirty-nine Articles, and
 - (c) the proviso in section 4 of the Constitution does not apply to the Regulations since the Regulations do not involve making alterations or variations.

9. On the basis of this argument there is no constitutional requirement that a service for the blessing of a civil marriage outside an authorised marriage service conform to the doctrine of this Church.
10. Sydney does not agree with this submission.
11. Section 5 of the Constitution assumes a federal scheme, providing that the plenary power of the Church to make canons, ordinances and rules for the order and good government of the Church is exercisable by “the several synods” and is “subject to the Fundamental Declarations and the provisions of this chapter”. The nature of the federal character is further spelt out in section 51, which confirms that the legislative power of a diocesan synod under its constitution is “Subject to this Constitution”.
12. Diocesan legislation must conform with the doctrine of this Church because it is subject to a constitutional framework which requires the canons, ordinances and rules of the Church to comply with the Fundamental Declarations and Ruling Principles. This framework is summarised by reference to a series of questions at paragraph 125 of Sydney’s primary submissions.
13. The starting point with section 4 is that the Church “retains and approves”, inter alia, the doctrine and principles of the Church of England embodied in BCP and the Articles. It has plenary authority to make statements, forms, rules, alterations of revisions thereof but these must be consistent with the Fundamental Declarations and be made as prescribed by the Constitution.
14. The proviso in the second part of the first paragraph of section 4 that any alterations or variations not contravene any principle of doctrine or worship in BCP or the Articles does not have the effect that a form of service that is not an alteration or a variation can be used in the Church irrespective of whether or not it is consistent with the doctrine of the Church. There is still a constraint that the proposed service must be consistent with the Fundamental Declarations and Ruling Principles.

15. If this were not so there would be no constitutional requirement that any new form of service not contravene the doctrine of the Church. It would be possible, for example, that a diocesan synod could make a regulation for a form of service to worship idols without offending the Constitution of the Church since this merely “fills a vacuum” or “provides for something that is not already provided for”.
16. Furthermore, it is not the case that the terms *alteration* and *variation* in section 4 exclude a form of service for which no provision is made. BCP and the Articles are the “authorised standard” of worship and doctrine. The use of a service that does not conform to this standard is an *alteration* or a *variation* from “the services...therein contained”. The effect of the Regulations is to permit the use of a ‘variation’ – a service to bless a same-sex marriage – which contravenes the principle of doctrine of BCP that marriage is only between a man and a woman.

The question of whether a service is contrary to or a departure from doctrine is not solely a matter for the bishop

17. The submissions supportive of Wangaratta acknowledge that the *Canon Concerning Services 1992* requires all forms of service used under clause 5(2) of the Canon to not be contrary to or a departure from the doctrine of this Church, but take the position, based on clause 5(4) of the Canon, that this question is solely a matter for the diocesan bishop to determine. It therefore follows from this argument that if a bishop does not consider that a service for the blessing of a civil marriage other than the voluntary union of one man and one woman arising from mutual promises of lifelong faithfulness is contrary to or a departure from the doctrine of this Church that is the end of the matter. The same would presumably follow in relation to other forms of service for which no provision is made that are contentious within the Church.
18. Sydney notes that section 5(4) only states that the bishop “may” make a determination concerning the observance of the provisions of the Canon. It does not require the

bishop to do so, nor provide that the bishop is the only determiner of this question. Ultimately the question of whether diocesan legislation to regulate the use of a form of service is a contrary to or a departure from the doctrine of this Church is a constitutional question and, in the case of a reference, a matter for the Tribunal.

19. If this were not the case, and the Tribunal were to accept the submission that the Regulations are merely a matter of diocesan legislation and that the bishop concerned can make exclusive determinations about these matters, there will no doubt be a further reference to the Tribunal from 25 members of the General Synod on the question of whether the *Canon Concerning Services 1992* is a valid exercise of legislative power by the General Synod.

The Regulations constitute an authorisation by diocesan legislation for a minister to conduct a service for the blessing of a same-sex marriage

20. The Archbishop of Perth argues that the source of authority for a minister to conduct a service for the blessing of a marriage is found in *Canon Concerning Services 1992* and that the Regulations are a mere limitation on the exercise of that authority made pursuant to clause 5(2) of the Canon [13-14].
21. Delegated legislation including a regulation made under a Canon is invalid not merely if it is contrary to the Canon purportedly authorising it but also if it is repugnant to the general law or some other statutory or constitutional provision: see e.g. *Halsbury's Laws of Australia* at [385-830], [385-850].
22. As noted in our primary submission, the question of inconsistency of the Regulations with the Constitution 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.
23. The Regulations purport to prescribe the only form of service that can be used to conduct a service for the blessing of a marriage in the Diocese of Wangaratta and

expressly prohibit the use of any other form of service by a minister in that Diocese (clause 4).

24. Furthermore, the Regulations contain a provision (clause 5) that no minister will be compelled to assent to conducting such a service if this would offend their conscience. This would seem to imply that a minister can be compelled to assent to conduct the service if doing so would not offend their conscience as the clause would otherwise have no work to do in the Regulations.
25. While the Regulations do further limit the discretion that a minister has under the Canon, in substance the effect of the Regulation is to legitimise and encourage the use of a service for the blessing of a marriage within the Diocese. This is also evidenced from the local context in which the Regulations were made (see paragraph 21 of Sydney's primary submissions). As such the Regulations are contrary to the constitution and invalid.

Further submissions

26. Sydney 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*.
27. Sydney also requests the opportunity to make submissions in any hearing that the Appellate Tribunal may wish to convene with respect to the References.
28. Sydney thanks the Tribunal for the opportunity to make these secondary submissions.

Dated: 14 February 2020

Michael K Meek SC

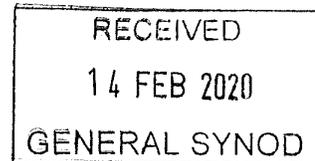
Chancellor of the Diocese of Sydney

Steven J Lucas

Senior Legal Counsel

Sydney Diocesan Services

**IN THE APPELLATE TRIBUNAL OF
THE ANGLICAN CHURCH OF AUSTRALIA**



R5

IN THE MATTER OF questions referred by the Primate under section 63(1) of the Constitution regarding the *Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019* of the Synod of Wangaratta

AND

IN THE MATTER OF questions raised under section 63 of the Constitution Regarding the Clergy Discipline Ordinance 2019 Amending Ordinance 2019 (Diocese of Newcastle)

RESPONSE TO THE SUBMISSION OF OTHERS

IN THE ABOVE MATTERS:

SUBMISSION BY FIONA D. McLEAN

Introductory remarks

1. I note that of the thirty-three submissions received by the Tribunal in the Wangaratta matter, twenty-nine were opposed to the actions of Wangaratta Diocese, and upheld historic Anglican doctrine and practice.
2. I affirm the need to show pastoral concern for those who are same-sex attracted, as well as those who struggle with other aspects of gender and sexuality. We are all broken and sinful people. Ultimately, the most loving thing we can do for anyone is to point them to Jesus, invite them to respond to him in repentance and faith, teach them to obey his

commands, which are for our good¹, and welcome them into Christian churches, where, as fellow disciples, we can walk together as brothers and sisters in Christ.

Key issues arising from the submissions

3. The matters before the Tribunal have deep roots in key doctrines and values. The approach revealed to these key themes by the submissions in favour of Wangaratta and Newcastle threatens our Anglican identity and unity. These key themes include the following, which I will comment on below:
 - 3.1. The authority of Scripture
 - 3.2. The issue of diversity
 - 3.3. The place of experience
 - 3.4. Comparisons with slavery and other issues

(a)The authority of Scripture

4. The key issue in this dispute is the authority of Scripture. As I have argued in my previous submissions, belief in and submission to the authority of Scripture is a fundamental Anglican doctrine, without which we cease to be authentically Anglican. I am concerned that the attitude to Scripture revealed in those submissions which affirm same-sex relationships undermines the authority of Scripture.
5. The doctrine of the authority of Scripture is undermined by an emphasis on the diversity and ambiguity of opinions about what the Bible actually says. For example:
 - 5.1. Equal Voices notes “the complexity and ambiguity of biblical texts” (para. 11.1)² and “the accepted divergence of opinions among Anglicans” (para. 11.3).
 - 5.2. The Rev’d Associate Professor Matthew Anstey suggests that “there are competing, and legitimate, bodies of theological opinion” on this issue (para. 1.7). He says that there are “fundamental disagreements within the Anglican Church of Australia on

¹ Deuteronomy 10:13.

² Note: All references, unless otherwise specified, are to submissions made in the Wangaratta matter.

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whether same-sex marriage is doctrinally and morally in accord with the mind of Christ” (para. 5.1).

6. Anstey’s emphasis on *interpretation* has the practical outcome of making the Bible so opaque as to be unknowable. The authority of Scripture thus devolves to a variety of competing interpretations, none of which retain the authority of “the Word of God”, but which are, essentially, human voices with merely human authority, with which we can agree or disagree. Thus the historic understanding of what Scripture says about human sexuality (or anything else) becomes just one interpretation among many, equally vulnerable to being dismissed or superseded.
 - 6.1. Anstey writes, “The study of the history of Christian debate about moral issues shows that *the interpretation of Scripture* is always the primary locus for disagreement ... It is also beyond dispute that *how* Scripture is interpreted is itself a primary issue of dispute” (para. 6.3, italics in original). For Anstey, “lack of agreement by committed, faithful Anglican scholars and theologians” (para. 4.4) means that we can question traditional understandings of the Bible.
 - 6.2. For Anstey, Scripture is only one source of authority alongside the Church, “science”, “technological inventions and advances” and “changes in the culture and world” (para. 3.6). These sources of authority all have some relevance and importance, but none can be allowed to override Scripture.
 - 6.3. Anstey critiques “the immediacy model” (para. 6.4 and following), and proposes an alternative model: that “we make our case for a doctrinal position in dialogue with science, tradition, historical analysis, and lived human experience” (para. 6.12). But of these many sources of authority, which takes precedence? When they disagree, how can this disagreement be resolved?
 - 6.4. Anstey further undermines Scripture by giving the Creeds more significance than Scripture. He says that the Creeds “set the clearest demarcation of what is and what is not Christian faith” (para.3.2). However, while they are important, their authority derives from the fact that they summarise and affirm what the Bible teaches. Our ultimate authority as Anglicans resides with Scripture, not the Creeds, which do not comment on every important issue (for example, they say nothing about sexual morality).

7. The issue before us is not a question of two different *interpretations* of Scripture, but two different *approaches* to Scripture: one which believes that Scripture is God's inspired Word, that God can communicate with us, and that it is possible to understand and obey God's word; and another view which fragments the Bible into a multiplicity of interpretations, all of which have only human authority and can therefore be disregarded. One outcome of an embrace of diversity and ambiguity seems to be that we no longer seek consensus, and therefore everyone gets to do what seems right in his or her own eyes. But Scripture becomes meaningless and irrelevant if we cannot with confidence work out what it says. And Anglicans without the Bible are no Anglicans at all³.

(b) The issue of diversity

8. A second key issue is how we think about diversity, and when it is something good, to be embraced and celebrated, and when it is something evil, to be resisted and opposed.

9. Equal Voices value diversity and see this as a good thing (e.g. "diversity of opinion [within the Anglican tradition in Australia] is accepted and encouraged", para. 10.4)⁴. Similarly, Anstey's preferred theological approach "sees diversity not as a threat to be eliminated but a gift to be embraced" (para. 6.12).

9.1. As an aside, it seems clear that the goal of Equal Anglicans is not, in the end, the kind of diversity in which historical Anglican views of sexuality are welcome. Their goal, in fact, is a Church in which their view prevails. While Equal Voices say, "**We profoundly respect difference**, including the genuinely held views of other Anglicans who oppose us" [emphasis in original]¹, they seek a Church where diverse sexual expressions and identities are welcomed and affirmed. In practice, the historical view and the revisionist view are incompatible; they cannot co-exist.

³³ With apologies to Peter Adam, whose repeated refrain at the consecration of Bishop Richard Condie in Tasmania was "A bishop without a Bible is no bishop at all"!

Appeals to diversity serve to weaken the authority of the traditional view as a first step towards removing it altogether – as we have seen in the TEC and in Canada, for example.

10. Good diversity includes the glorious diversity of creation, the variety of people and gifts in the body of Christ (Romans 12; 1 Cor. 12); and the wonderful diversity we will see around God's throne in heaven, where people from all tribes, nations, peoples and languages will be gathered (Rev. 7:9).
11. But not all diversity is good. For example, Paul condemns the preaching of "a different gospel" in Galatians (1:6-9), and urges Christians to be "standing firm in one spirit, with one mind striving side by side for the faith of the gospel" (Phil. 1:27; see also Eph. 4:3). When it comes to the gospel, we are to strive for **unity**, not diversity. Paul writes to the Corinthians, "I appeal to you, brothers, by the name of our Lord Jesus Christ, that all of you agree, and that there be no divisions among you, but that you be united in the same mind and the same judgment" (1 Cor. 1:10).
12. Thus, good diversity is to be celebrated and encouraged; but sinful diversity is to be resisted and opposed, something to be mourned rather than celebrated. Sadly, the diversity of opinions within the Anglican Church about same-sex marriage is not something to be celebrated, but rather an example of where we should keep seeking Scripture and strive to be "of one mind" on this fraught issue.

(c) The place of Experience

13. The authority of Scripture is further undermined by the authority given to experience. Anstey's submission argues that "lived experience" should prompt us to re-evaluate our doctrine (para. 7.1 and following). He says 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" (para. 7.4). Personal stories are indeed a profound influence and should be given due weight and an appropriate pastoral response.

14. Yet the Bible teaches us that our experience is not necessarily a good guide to what is true and right. We are beset by sinful desires that must be resisted (hence Paul tells Timothy to “Flee youthful passions”, 2 Timothy 2:22; we are told to “put off your old self, which ... is corrupt through deceitful desires”, Eph. 4:22). There are times when our experience does not match what we believe about God. God may seem distant, uncaring, even unjust (see, for example, many of the psalms of lament, including Psalms 13 & 44). The challenge many of us face is to hold onto faith when times get tough, when following Jesus does not seem to bring us fulfilment, when we are counting the cost of discipleship, and when we are facing terrible suffering, including unjust or apparently senseless suffering. Can we believe, like the psalmist, that God might sometimes afflict us for our own good (see, for example, Psalm 119:71, 75; Hebrews 12:10-11)? Can our faith survive negative life experiences? We show our submission to Scripture when we obey and trust God’s Word, even when our lived experience does not seem to match what we believe about God.

15. C.S. Lewis, in his classic *The Screwtape Letters*, helps us see the limitations of experience. In it, Screwtape, the senior devil, advises a junior devil of the danger his ‘patient’ (a Christian man) is in if his lived experience doesn’t match what he believes and yet he still persists in faith:

“He [God] leaves the creature [the Christian man] to stand up on its own legs – to carry out from the will alone duties which have lost all relish. ... Our cause is never more in danger than when a human, no longer desiring, but still intending, to do our Enemy’s [God’s] will, looks around upon a universe from which every trace of Him seems to have vanished, and asks why he has been forsaken, and still obeys”⁵.

16. The emphasis on experience, on the importance of our feelings, and on personal fulfilment is promoted and reinforced in our culture. The values of our society’s worldview are often directly opposed to biblical values. It is these values which have, I

⁵ C.S. Lewis, *The Screwtape Letters*: Fount, HarperCollins: London, 1942, page 31. For those unfamiliar with this book, it is written from a senior devil to a junior devil, so “our Enemy” is, in fact, our good God!

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believe, unduly influenced the submissions of Wangaratta and others who support their campaign for the legitimisation of same-sex relationships. These values include:

- 16.1. Individualism, where the rights and desires of the individual are prioritised over the welfare of the community as a whole. Our culture values autonomy, the right to direct our own lives, to make decisions that serve our own best interests, and to do what we think is right, without reference to or criticism from other people.
- 16.2. The prioritisation of pleasure. In contrast with the previous Western paradigm of guilt/innocence, we are now in an era where a pain/pleasure paradigm is paramount. For those operating under a pleasure/pain paradigm, doing right means doing what gives me pleasure; and what is wrong is not what brings guilt, but what brings pain.
- 16.3. Self-fulfilment and especially sexual fulfilment. Virginity and sexual purity are seen as undesirable; denying oneself sexually is seen as dangerous repression; and celibacy is seen as a state which is incomplete and to be pitied.
- 16.4. Immediate gratification. We are encouraged to live our lives in the light of this world, "under the sun"⁶, rather than in the light of heaven and eternity.

17. The Biblical worldview is in stark contrast to this worldview:

- 17.1. Instead of prioritising the individual, the Bible has much more of a corporate perspective. We are the body of Christ; we are to act for the good of others, to put their interests above our own (e.g. Phil. 4:1-4). We are to think about what benefits society as a whole, not just us as individuals. This will mean, at times, denying ourselves for the sake of others.
- 17.2. Instead of prioritising pleasure, the Bible says the highest good is to please God and serve him. This may well mean suffering: Jesus tells us that following him will mean denying ourselves and taking up our cross (Luke 9:23). Biblical values include discipline, denial, and self-control (e.g. Phil. 3:7-11; 1 Peter 2:21; 2 Tim. 1:8-9a; 2:3).

⁶ A phrase used throughout Ecclesiastes to symbolise life without reference to God or eternity.

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- 17.3. The Bible teaches us to consider our responsibilities and our duty, rather than our rights. We are to do what is right, even when it hurts, even when it costs us.
- 17.4. We are to live in the light of Jesus' return, rather than investing all we have in this life (e.g. the Parable of the Rich Fool in Luke 12:16ff; the parables in Matthew 25). This may mean practising delayed gratification, rather than instant gratification, even in matters as significant as intimate relationships. We see this in the lived experience of many of the prophets: Jeremiah was commanded not to marry (Jer. 16:2); Hosea was called to marry a prostitute; Jesus says some will be "eunuchs" for the sake of the gospel (Matthew 19:12). Rather than pursuing pleasure, God's Word assures us that it's worth suffering now for the sake of future glory; it's worth denying ourselves in order to honour God.
- 17.5. In the biblical perspective, sex is not just about our pleasure and fulfilment and desires, but it is "sex in the service of God"⁷. Sex in the context of marriage is not just to give pleasure to individuals, but to strengthen the marriage relationship, for the procreation of children, for the stability of the family and therefore society, and ultimately for the good of others. We honour God and we build up his church when we treat sex the way that God intended and commands. Same-sex sexual relations cannot achieve these purposes and do not honour God.

(d) Comparisons with slavery and other issues

18. In his submission, Matthew Anstey argues that, in the same way that the church has changed its attitude to slavery, we should now also change our attitude to homosexual practice (see paras. 5.4, 6.1, 6.17, 6.20). This is a common argument. But this is not a fair comparison.
19. Firstly, I acknowledge the abhorrence and evil of Negro slavery in the US in the antebellum period, and of modern-day slavery, sex trafficking, and bonded labour. It was a good and right thing for Christians like William Wilberforce to strive to abolish slavery, and for organisations today to oppose current evils of slavery.

⁷ Christopher Ash, *Marriage: Sex in the Service of God*.

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20. Secondly, the Bible sees slavery generally as undesirable. God's definitive act in the OT was the rescue of the Israelites from slavery in Egypt. While the Israelites were able to buy male and female slaves "from among the nations", they were not to enslave fellow-Israelites (Leviticus 25:39-46; 2 Chronicles 28:8-11). In the NT, Paul tells Christians who are slaves that if they can obtain their freedom, they should do so (1 Cor. 7:21); and he tells Philemon to now treat Onesimus, his former slave, as a brother (Philemon verses 15-16). 1 Timothy 1:10 condemns "enslavers", i.e. "those who take someone captive in order to sell him into slavery" (ESV footnote). There are thus biblical principles that condemn the practice of modern-day slavery.

21. Nevertheless, although slavery in the Bible may be undesirable and the result of poverty and hardship, it is not necessarily evil. This is in stark contrast to same-sex sexual activity, which is universally condemned as sinful in the Bible, both OT and NT.

21.1. In the Bible, it is not immoral to be a slave, to be in someone's service and subject to their commands. For example, Israelites could choose to remain in slavery to fellow-Israelites without condemnation (e.g. Deut. 15:12-17). In the New Testament, slaves are not told to revolt, but to obey their masters, especially where those masters are fellow-believers, even telling them that, in their work as slaves, "you are serving the Lord Christ" (Colossians 3:22-24).

21.2. Furthermore, it was not immoral to be a slave owner. Alongside the commands to slaves, the NT includes commands to slave owners, and both slaves and slave owners could be part of God's family (e.g. Colossians 3:22 – 4:1; Ephesians 6:5-9).

21.3. Even more strikingly, the Bible uses the language of slavery to describe our relationship to God, who rescued his people from slavery in Egypt to be his slaves, to belong to him and serve him. As God's people, we are his slaves (e.g. Romans 6:18, 22; 1 Corinthians 7:22). Paul says, "You are not your own, for you were bought with a price" (1 Cor. 6:19-20; cf. 1 Cor. 7:23).

21.4. The implications of this are that the biblical attitude to slavery is more nuanced and complicated than just that it is evil. In contrast, there are no positive affirmations of sexual immorality, including same-sex sexual activity.

22. Similarly, attempts to justify a change in attitude to same-sex relationships by comparisons with changed attitudes to the ordination of women and remarriage of divorced persons are also flawed.

22.1. While there is controversy over whether the Bible permits women to exercise authoritative preaching and leadership, it is very clear from the Bible that women were actively engaged in ministry and that they were Paul's valued co-workers (e.g. Romans 16). The question is not whether women can or should be engaged in ministry, but what kind of ministry. In contrast, there is no ambiguity in the Bible about the status of same-sex sexual activity: it is universally condemned.

22.2. Divorce is regarded as an evil in the Bible. It is never something to which Christians should aspire, but is always the result of sinful behaviour by one or both parties to the marriage. At the same time, even Jesus stated that divorce was permissible in some circumstances (e.g. Matthew 5:32; 19:9); and God himself talks about divorcing his unfaithful wife, Israel (Jeremiah 3:8). There is therefore biblical provision for divorce in some circumstances.

22.3. Furthermore, the question of the ordination of women does not pertain to the question about sexual morality; while the discussion around divorce is very much in the context of marriage between one man and one woman.

23. As Anstey suggests, the Church needs to keep re-examining its stance on moral and other issues (para. 6.1). The purpose of such re-examination, however, must always be to bring the Church back in line with God's revealed word. The Church is always called to conform to God's standards and God's word. Often, this will be a costly stand against the values of the culture in which we live. We are called to be salt and light⁸, radically different from those around us. Thus we need wisdom to discern between appropriate contextualisation and ungodly compromise.

⁸ Matthew 5:13-16.

Response to specific arguments and claims in other submissions

24. Regarding the submission by **Equal Voices Ltd** in the Wangaratta matter (dated 13th December 2019), I note that this submission is not based on biblical arguments, but on arguments from society and culture. Equal Voices “seeks marriage equality for its members and believes this to be God’s loving will and intention” (Para. 2), but nowhere provide a biblical argument for this.
25. Equal Voices estimates that they represent “an estimated 300,000 LGBTIQ+ people in the Anglican Church of Australia” (para. 1). This is a very dubious figure, given that:
- 25.1. Of the 3 million people who identify as Anglican in the census, it is not known how many are actively involved in an Anglican church, or even whether they attend church at all.
- 25.2. The estimate that “at least 11 in 100 Australians [identify] as lesbian, gay, bisexual, transgender or intersex” (footnote 1) is highly disputed. The website that Equal Voices references does not provide any evidence. In contrast, the Australian Government website for the Australian Institute of Health and Welfare estimates that around 3.0% to 3.2% of adults identify as homosexual or bisexual⁹. The “1 in 10” figure popularised by Alfred Kinsey has since been comprehensively discredited¹⁰.
- 25.3. Equal Voices’ estimate depends on the questionable assumption that LGBTIQ+ people are represented in Anglican Churches in the same proportion as in the general population.
- 25.4. Further, of Anglicans who experience same-sex attraction, it is not known how many of these uphold the traditional, historic biblical teaching on sexuality.

⁹ <https://www.aihw.gov.au/getmedia/61521da0-9892-44a5-85af-857b3eef25c1/aihw-aus-221-chapter-5-5.pdf.aspx> See also findings in Britain of rates of LGB respondents of 0.3–3%: or 2.0–2.5% (pages 58 and 59) in <https://www.equalityhumanrights.com/sites/default/files/research-report-37-estimating-lesbian-gay-and-bisexual-population-in-britain.pdf> (research is from 2009)

¹⁰ e.g. See <https://erlc.com/resource-library/articles/alfred-kinsey-a-brief-summary-and-critique>

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Not all same-sex attracted Anglicans would be supportive of Equal Voices' aims and beliefs.

26. Equal Voices are keen to affirm LGBTIQ+ people, believing that this is in their best interests. However, statistics show that being LGBTIQ is associated with significantly higher levels of suicidal ideation, mental health issues, self-harm, drug abuse, and other negative outcomes¹¹. It is possible that these outcomes are associated with being lesbian, gay, etc, not just the result of societal prejudice, in which case encouraging such identification and lifestyle will cause more harm, rather than less.
27. Regarding the submission by the **Archbishop of Perth** in the Wangaratta matter (dated 13th December 2019): the Archbishop of Perth argues that "The Blessing Service is not, nor does it purport to be, a marriage service" (para. 4, 26). The flimsiness of this argument is revealed by the fact that the same-sex relationship being blessed is repeatedly referred to as a "marriage" or as "married" (paras. 41, 45, "The form of service clearly indicates that it relates to a marriage ...", para. 77).
28. The argument that "the blessing is only that of persons in a loving relationship, not what may or may not be conducted within it" (para. 27) does not hold up, given that the blessing is the blessing of the *relationship*, not of two unconnected individuals. Contrary to Goldsworthy's assertion, the blessing of a (heterosexual) marriage does not mean that any and all ungodly behaviour within the marriage is blessed, but that the form of the relationship is in accordance with God's design and purposes. The same cannot be said for a same-sex relationship.
29. In response to para. 39, Solomon's prayer for blessing of the people in 1 Kings 8 is based on repentance (see verses 33, 35, 47-48). God does not bless indiscriminately or unconditionally, but calls everyone to "repentance that leads to life" (Acts 11:18).

¹¹ "The Statistics at a Glance: The Mental Health of Lesbian, Gay, Bisexual, Transgender and Intersex People in Australia", 2020, accessed at <https://lgbtihealth.org.au/statistics/> See also <https://www.aihw.gov.au/getmedia/61521da0-9892-44a5-85af-857b3eef25c1/aihw-aus-221-chapter-5-5.pdf.aspx>

30. Archbishop Goldsworthy says that on the cross Jesus was not cursed, but is “the source of all blessing” (para. 89). But the Bible teaches us that God’s curse is a real and potent force which falls on unrepentant sinners. On the cross, Jesus drank the dreadful cup of God’s wrath (Luke 22:42 and parallels; cf. Psalm 75:8; Isaiah 51:17). Jesus can bring blessing to us only because on the cross he suffered the curse we deserved: “Christ redeemed us from the curse of the law by becoming a curse for us” (Galatians 3:13; see also 2 Cor. 5:21; 1 Peter 2:24; Isaiah 53:4-6).

31. Archbishop Goldsworthy argues that “There is no intent in this submission to change the Church’s doctrine of marriage” (para. 97). This ignores the fact that introducing a blessing of same-sex civil marriage would fundamentally change the Church’s doctrine. C.S. Lewis perceptively saw the danger of changing liturgy and pretending that this was not a doctrinal change:

“What we laymen fear is that the deepest doctrinal issues should be tacitly and implicitly settled by what seem to be, or are avowed to be, merely changes in liturgy. ... Can you blame us if the reduction of grave doctrinal issues to merely liturgical issues fills us with something like terror? ... [T]he relation [between belief and liturgy] is healthy when liturgy expresses the belief of the Church, morbid when liturgy creates in the people by suggestion beliefs which the Church has not publicly professed, taught, and defended ... Whether an ‘enrichment’ of liturgy which involves a change of doctrine is allowable, surely depends on whether our doctrine is changing from error to truth or from truth to error”¹².

32. Finally, regarding the submission by the **Diocese of Newcastle** in the Newcastle matter (dated 24th December 2019): It is fundamentally illogical to argue that there is no significant change to the Church’s doctrine or practice, and yet have to introduce an Ordinance to prevent those participating in same-sex marriage ceremonies from being charged with an offence. As the Equal Voices’s submission (in the Newcastle matter) notes, “The wording of The Ordinance implies that the blessing of such a marriage, or

¹² From “Letters”, pages 332-333, in C.S. Lewis, *God in the Dock: Essays on Theology and Ethics* (ed. By Walter Hooper), William B. Eerdmans: Grand Rapids, Michigan, 1970.

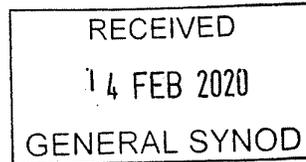
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the act of a clergy member engaging in such a marriage, remains an offence under canon law” (para. 6). It is clear that, if there is nothing wrong with participating in a same-sex marriage ceremony, there would not need to be a special Ordinance to protect clergy who participated in this.

33. The Newcastle submission drives a dangerous wedge between doctrine and practice, arguing that what one does with regard to sexual practice does not matter as long as official doctrine remains unchanged.

Conclusion

34. In summary, I urge the Appellate Tribunal to recognise the seriousness of the matters before them, and to act to uphold the authority of Scripture and to retain the doctrines and practices which make us Anglican.



R 6

Friday, 14 February 2020

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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 further 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.

Yours faithfully,

James Oakley

General Manager/Registrar

Encl

**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")**

**Further Submissions of the Diocesan Council of the Diocese of Tasmania
("Tasmania")**

Background

1. Tasmania made its primary submissions to the Appellate Tribunal with respect to the References on 13 December 2019.
2. Tasmania has now had the opportunity to review and consider the primary submissions made by others. Accordingly, Tasmania wishes to make the following further submissions in response.

Do the questions the subject of the References constitute questions arising under the Constitution?

3. Tasmania submits that the answer is "Yes" with respect to all the questions raised for the reasons set out below.
4. Section 63(1) of the Constitution provides as follows:

*"Wherever a question arises under this Constitution and in the manner provided and subject to the conditions imposed by this Constitution the question is referred for determination or for an opinion to the Appellate Tribunal the tribunal shall have jurisdiction to hear and determine the same or to give its opinion as the case may require provided that if provision is not otherwise made under this Constitution for the reference of such question to the tribunal the Primate may and shall at the request of General Synod by resolution or at the written request of twenty-five members thereof or at the request by resolution of the provincial or diocesan synod affected refer the question to the tribunal which shall have jurisdiction as aforesaid.
(emphasis added)*

5. Tasmanian submits that, under the Constitution, the purpose of the Appellate Tribunal is to allow significant disputes or controversies within the Church to be resolved without resort to the secular Courts. Tasmania notes that the drafters of the Constitution would have had in mind earlier Court disputes, such as the 'Red Book' case (*Wylde v*

Attorney-General (NSW) (At the relation of Ashelford) (1948) 78 CLR 224), and the desirability of creating an alternative dispute resolution mechanism.

6. As noted previously by the current President of the Appellate Tribunal:

“The framers of our Church's Constitution that came into effect on 1 January 1962 had the Apostle's words firmly in mind when they established a system of Church Tribunals for resolving internal disagreements that threaten order in our shared belief system. At the apex is the Appellate Tribunal, a body consisting of three diocesan bishops and four laypersons with significant legal qualifications....

The Appellate Tribunal has also a broad original jurisdiction to resolve constitutional disputes. It may determine the validity of canons or proposed canons of General Synod. It may also provide what are described as determinations or opinions in all manner of constitutional issues if questions are referred to it by the Primate at his discretion or if requested to do so by 25 members of General Synod or a provincial synod affected thereby. The decision of the Appellate Tribunal may extend to questions of doctrine, faith, ritual, ceremonial or discipline as well as the interpretation of the Constitution itself. Unless unanimous, the Tribunal is required to consult with the House of Bishops and a board of priestly assessors in matters of doctrine.

(“Believers In Court: Sydney Anglicans Going to Law”, Justice Keith Mason, Cable Lecture, 9 September 2005, pages 9-10)

7. Accordingly, Tasmania submits that Section 63 should be given its ordinary everyday meaning and not construed narrowly or artificially.
8. In particular, Section 5 of the Constitution limits the powers of the “several synods and tribunals” as follows:

“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.” (emphasis added)

9. Section 51 of the Constitution reinforces this same limitation:

“Subject to this Constitution a diocesan synod may make ordinances for the order and good government of this Church within the diocese, in accordance with the

powers in that behalf conferred upon it by the constitution of such diocese.”
(emphasis added)

10. It is therefore a question under the Constitution as to whether the Wangaratta Regulations comply with Sections 5 and 51.
11. In addition, the Wangaratta Regulations purport to be made pursuant to a power arising under the *Canon Concerning Services 1992*. That Canon has been made under the Constitution, and hence questions as the interpretation and effect of that Canon are also matters arising under the Constitution.
12. Tasmania notes that previous determinations of the Tribunal have considered the validity of Diocesan legislation. Of particular relevance to the current References is the *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*.
13. If the Tribunal determined that the questions in the current References are not questions which arise under the Constitution, then this would be a significant departure from the Tribunal's previous determinations.

Further submissions

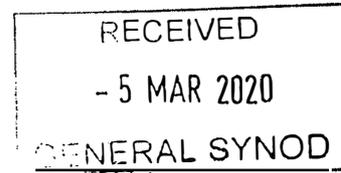
14. Tasmania requests and reserves the right to make further submissions in accordance with the timetable established by the Appellate Tribunal and otherwise in accordance with the *Appellate Tribunal Rules 1988*.
15. Tasmania seeks leave to appear and make submissions in any hearing that the Appellate Tribunal may wish to convene with respect to the References and to be represented by counsel at such a hearing.

Conclusion

16. Tasmania again thanks the Appellate Tribunal for the opportunity to make these further submissions and welcomes the opportunity to clarify any aspects if that would be of assistance.

Dated: 14 February 2020

Alex Milner
Church Advocate



IN THE APPELLATE TRIBUNAL

ANGLICAN CHURCH OF AUSTRALIA

IN THE MATTER OF various questions in two references made 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

REPLY SUBMISSIONS BY SYNOD OF DIOCESE OF WANGARATTA

Introduction

1. These submissions are made in response to the various submissions made by other parties with regard to the questions -
 - 1.1. posed by the Primate regarding the *Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019 (Regulations)* in the reference made on 5 September 2019; and
 - 1.2. posed by the Primate's subsequent reference made on 14 October 2019 at the request of more than 25 members of General Synod relating to the Regulations.

Adoption of other submissions

2. Wangaratta continues to rely on its primary submissions. Further or in the alternative to the arguments advanced in those primary submissions, Wangaratta respectfully adopts the submissions made on behalf of -
 - 2.1. the Archbishop of Perth;
 - 2.2. the Bishop and Diocese of Newcastle;
 - 2.3. the Rev'd Associate Professor Matthew Anstey; and
 - 2.4. Equal Voices Anglican.

Submissions not referred to should not be taken as accepted

3. Wangaratta joins issue with all other submissions and should not be taken as accepting or adopting them merely because they are not referred to in these brief reply submissions.

Submissions to which no regard should be had

4. The Tribunal cannot be assisted by, and should give little or no weight to, submissions from individuals or groups which merely assert individual opinions or which offer personal accounts or an exegesis from selected texts.
5. As set out in Wangaratta's primary submissions, strong, sincere, faith-led but opposing views are held by Anglicans on many topics, including the question of same sex relationships. Whilst not disputing the entitlement of those interested parties to their views or the strength or sincerity with which they are held, Wangaratta invites the Tribunal to conclude that those views cannot assist in the task of constitutional analysis with which the Tribunal is concerned.
6. Similarly, submissions referring to the details of sexual practices and the opinions of the interested parties as to the propriety of those practices do not assist the Tribunal and should be disregarded.
7. Thirdly, as set out in Wangaratta's primary submissions, the content of doctrine is not to be discerned from contested interpretations of Scripture. The Tribunal is not equipped to determine theological questions. Many submissions invited the Tribunal to engage in detailed biblical analysis of a kind well beyond the proper scope of the Tribunal's functions. The existence of competing analyses is, as Wangaratta's primary submissions set out, a clear indication that the question of marriage is not one of doctrine or faith but of a complex combination of factors which draw on and extrapolate from faith to sometimes dramatically contrary conclusions.

Doctrine as a constitutional term

8. Many of the submissions made by interested parties used the term doctrine other than in its constitutional context. The term can be commonly used to describe the teaching of the Church on any topic, and it is not infrequently used when referring to the Church's position on marriage.
9. However, the common or ordinary meaning of the word must give way where it is a defined term in the Constitution. In constitutional terms, and for the purposes of section 5(3) of the *Canon Concerning Services*, doctrine means teaching on *questions of faith*. It does not mean teaching on practice, on discipline, on ritual, on ceremonial, or on matters affecting spiritual, moral or social welfare. Whilst the Church's teaching or statements on all such matters may be derived from or inspired by faith, and while they may be referred to in ordinary usage as doctrine, they will not be doctrine as that term is used in the Constitution and in the *Canon Concerning*

Services. Submissions which do not observe that distinction are to that extent misconceived.

10. This is not to suggest that the Church's teachings on practice, discipline, ritual, ceremonial, or matters of spiritual and moral and social welfare are unimportant or that they are teachings which should be lightly departed from. Rather, it is to make the point that -
 - 10.1. faith, in the Constitution, means something different from all of those other things, and
 - 10.2. in the Constitution doctrine means the teaching of the Church about faith and only faith. Practices are not doctrine. Teaching and statements on matters of social or moral welfare are not doctrine.
11. It is for this reason that care must be taken to define *faith* for the purposes of the Constitution. As set out in Wangaratta's primary submissions, the proper constitutional construction of the term is that it refers to the matters in the Fundamental Declarations. That is the faith of the Church, and doctrine means the teachings of the Church about that faith.
12. Section 4 of the Constitution refers to *principles of doctrine and worship* contained in the BCP and the 39 Articles. It does not render the whole of the BCP and the 39 Articles as doctrine. Whilst there are clearly principles of doctrine reflected in both the BCP and the 39 Articles, submissions which proceed on the assumption that the two documents are entirely doctrine are to that extent also misconceived.

The Tribunal's previous decisions on marriage

13. In considering the present references the Tribunal should act consistently with past decisions and be slow to depart from them.
14. The Tribunal has previously determined that a canon permitting marriage after divorce where divorce occurred for reasons other than those expressly referred to in the New Testament did not contravene the Fundamental Declarations or the Ruling Principles. The argument that the relevant canon was contrary to section 2 of the Constitution because of incompatibility with Scripture was expressly rejected by the Tribunal.
15. Many submissions made in the present references did not acknowledge this ruling or its implications for the argument that confining marriage to heterosexual couples is a matter of doctrine. Wangaratta refers and repeats the arguments made in its primary submissions that the Church's teaching on marriage is not doctrine as that term is

used in the Canon Concerning Services and that, in the alternative, that teaching is confined to Holy Matrimony and does not prevent persons in other kinds of relationships from being blessed by God.

Characterising the Regulations and the service of blessing

16. The Regulations do not relate to spiritual matters or to doctrine. They do not purport to alter the Church's teaching on any matter of doctrine or faith (contrary to the submissions made by the Diocese of Tasmania). They do not alter the Church's teaching on marriage. The fact that the Regulations permit a minister to choose not to participate in a service of blessing does not render the content of the Regulations or the service of blessing an alteration to faith or ritual or worship.
17. Whereas in the 1989 Determination by the Tribunal relied upon by the Diocese of Tasmania the impugned provisions would have had an effect beyond the boundaries of the relevant diocese (by purporting to ordain women as priests in the wider Church), the Regulations have no effect outside of Wangaratta. The form of service is only authorised for use in the diocese, and that form of service does not convey or purport to convey any formal status, in religious or sacramental terms, on the civil marriage of the persons who receive the blessing. Nothing done in a service conducted using the form of blessing authorised in the Regulations is required to be recognised outside the diocese. In that regard the Regulations and the service they authorise are entirely different to legislation relating to matters of ordination.

The 1854 Act and the scope of Wangaratta's legislative powers

18. In making the Regulations Wangaratta relied on the power conferred by section 5(2) of the *Canon Concerning Services*. The scope of that power is discussed below.
19. To the extent that it is necessary to do so, Wangaratta also relies on its powers under its own Constitution, which powers are retained under section 51 of the Constitution. Those powers are derived from the *Church of England Act 1854 (the 1854 Act)*.
20. The 1854 Act contains no relevant limitation on Wangaratta's power to make the Regulations. Section 2 of the 1854 Act provides for the making of regulations, acts and resolutions by Synod relating to the position, rights, duties and liabilities of ministers and members of the Church.
21. As set out above, the Regulations do not alter any authorised standard of faith or doctrine. They do not relate to spiritual matters. The Regulations do no more than -

- 21.1. regulate the way in which a certain blessing of persons, if it is conducted by a priest in the diocese, is to be conducted, and
 - 21.2. provide for records to be kept of any such services of blessing.
22. These are matters well within the legislative remit of the diocese, relating as they do to the rights, duties and liabilities of ministers of the Church.
 23. Accordingly, to the extent that it is necessary for Wangaratta to rely on its Constitution, rather than on the *Canon Concerning Services* for its legislative power to make the Regulations, that power exists.

Section 5 of the *Canon Concerning Services*

24. The four sub-sections of section 5 of the Canon must be read both separately and together to identify what, and who, they authorise by way of variations or additional forms of service.
25. Section 5(1) permits a minister to make and use variations to any authorised form of service if the variations are not of substantial importance. That provision has no application in the present references.
26. Section 5(2) -
 - 26.1. permits a minister, where there is an occasion not provided for in the authorised forms, to use forms of service considered suitable for the occasion;
 - 26.2. makes that permission subject to any regulation made from time to time by the synod of the diocese; and
 - 26.3. by necessary implication, empowers the synod to make regulations in relation to the use of forms of service for occasions not otherwise provided for.
27. Section 5(3) limits the kinds of variations and forms of service that will be permitted by reference to both matters of doctrine and matters of form.
28. Section 5(4) makes the diocesan bishop the authority in any question regarding compliance with section 5(3).
29. So read, it can be seen that the power to determine whether a form of service is contrary to or a departure from the doctrine of the Church rests not with the Appellate Tribunal but with the bishop of the diocese in which the form of service is used. It is also clear that a diocesan synod, presided over as it is by the bishop, has power to make regulations of the kind made by Wangaratta in this instance.

The questions posed in the second reference

30. Questions 1 and 2 as posed by the more than 25 members of General Synod do not raise a matter under the Constitution and should not be answered by the Tribunal. They represent an attempt to obtain an opinion about consistency with the Constitution or to use the Tribunal as a sounding board for the advancement of particular theological views. As set out in Wangaratta's primary submissions, the Tribunal has made it plain in previous cases that neither circumstance will constitute a matter arising under the Constitution.
- 30.1. Question 1 asks whether the form of service authorised by the Regulations is consistent with the Fundamental Declarations and Ruling Principles. As set out above and in Wangaratta's primary submissions, this is not the proper test for whether a form of service authorised under the *Canon Concerning Services* meets with the requirements of section 5(3), and the Tribunal is not the proper arbiter of the question in any event.
- 30.2. Question 2 asks a wholly hypothetical question that, in the event it had some basis in fact, would nevertheless be neither a proper question under the *Canon Concerning Services* nor a proper matter for the Tribunal.
31. Question 3 should not be answered because of its reliance on questions 1 and 2. Whether or not the Regulations are validly made as a matter of legislative power of the Wangaratta Synod is not to be answered by reference to the form of the blessing authorised by them, or any hypothetical alternative form of blessing.
32. In the alternative, for the reasons set out in these and the primary submissions made by Wangaratta, question 3 should be answered "yes".

DATED: 5 March 2020 (pursuant to extension of time granted by the Tribunal)



RACHEL ELLYARD
Advocate, Diocese of Wangaratta