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Friday, 14 February 2020

Ms Anne Hywood  
Registrar Appellate Tribunal  
General Synod Office  
Anglican Church of Australia  
Suite 4, Level 5  
189 Kent St,  
Sydney NSW 2000



By email: [appellatetribunal@anglican.org.au](mailto: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