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GENERAL SYNOD
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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
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