

A DIGEST OF APPELLATE TRIBUNAL DETERMINATIONS

1972-2025

Collated by:

The Hon Keith Mason AC KC

Member Appellate Tribunal 2004 – 20xx

President Appellate Tribunal 20xx - 2022

9 September 2025

[A list of AT decisions (between 1972 and 2025) is attached. This digest cites Determinations by year and abbreviated title. A number after the citation is a reference to a paragraph.]

Act of Uniformity 1662

- non-application to ACA (1976 *An Australian Prayer Book*; 2010 *Administration of the Lord's Supper* 84-87; 2020 *Wangaratta Blessing* 93, 95)

Anglican Church of Australia

- members and their obligations (2018 *Affiliated Churches* 28, 91)
- name, protection of (2018 *Affiliated Churches* 84)

Appellate Tribunal

- appellate jurisdiction (2017 *Slater* 135ff; 2020 *Newcastle Clergy Discipline*; 2025 *Appeal of Rev Gail Orchard*)
- authority to make binding rulings and finally decide legal disputes under *Constitution* (1987 *Ordination of Women to the Office of Deacon Canon 1985* (Tadgell J); 1991 *Eleven Questions re Women's Ordination* (Handley J); 2010 *Administration of the Lord's Supper* 17; 2020 *Wangaratta Blessing* 287)
- clear lines need to be drawn in constitutional rulings (*Wangaratta Blessing* 8, 14, 27, 144, 184, 200, 203-4, 212, 253, 259; 2020 *Newcastle Clergy Discipline*). See also Practice and Procedure
- consultation with House of Bishops and board of assessors and non-bindingness of responses (*Constitution* s58) (1980 *Marriage of Divorced Persons* [assessors divided 4:3. See AT papers 047/19 in Moore College Library]; 1985 *Admission of Women to Holy Orders re Prayer Book Usage* (Handley QC); 1991 *Eleven Questions*; 1997 *Celebration of Holy Communion by Deacons* (Bleby J, Young J); 2020 *Wangaratta Blessing* 121, 141, 147-156, 278-9). See also Words and Phrases 'matter involving doctrine'
- expects submissions and cooperation from members of GS who initiate a reference (2007 *Special Tribunal*; 2010 *Administration of the Lord's Supper*)
- jurisdiction if engaged may extend to wider matters (1989 *Melb Ordination of Women to the Office of Priest Act*; 2017 *Slater*)
- may inform itself broadly, including examining the history of the formation of the *Constitution* (1989 *Melb Ordination of Women to the Office of Priest Act*)

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- recusal issues and processes (*1989 Women Deacons at General Synod* (Tadgell J); *1997 Celebration of Holy Communion* (Bishop Chiswell); *2007 Special Tribunal* (Bleby J and Young J); *2007 Women Bishops* (Archbishop Herft); *2020 Wangaratta Blessing* 260-277)
- will not decide theological disputes unless essential (*1989 Women Deacons and Membership of General Synod* (Cox J); *1991 Eleven Questions* (Handley J)); *2020 Wangaratta Blessing* 7, 14, 199, 202, 214, 236, 239, 248). Contrast *1991 Eleven Questions* (Bishop Holland).
- will not interpret diocesan constitutions unless matter arises under the ACA Constitution (*1991 Eleven Questions* (Archbishop Robinson); *2020 Newcastle Clergy Discipline* 29)
- precedential authority of earlier determinations (*stare decisis*) (*1980 Marriage of Divorced Persons*; *1987 Ordination of Women to the Office of Deacon Canon* (Cox J); *1991 Eleven Questions re Women's Ordination*; *2007 Women Bishops* 66-84; *2010 National Register Canon* 2007; *2020 Wangaratta Blessing* 158)
- See also Practice and Procedure, Words and Phrases ('matters arising under this Constitution')

Baptism

- by deacons (*2010 Administration of the Lord's Supper* 101-106)
- child of same-sex married couples (*2020 Wangaratta Blessing* 103)

Bishops

- assistant bishops (*2007 Women Bishops*)
- authority to ordain limited to own diocese unless permitted (*1991 Eleven Questions re Women's Ordination* (Bishop Holland))
- bishop administrator (*2017 Bishop Administrator*)
- election and confirmation under *Constitution* (*2007 Women Bishops*)
- exclusive function of ordaining priests (*1997 Celebration of Holy Communion* (Tadgell J))
- historical review of position in England before 1962 and in Australian colonial Church (*2007 Women Bishops*)
- inherent powers (*1991 Eleven Questions*)
- licences to clergy (*2018 Newcastle Clergy Discipline* 89-90)
- no inherent power to depose another bishop (*2017 Slater* 47, 117)
- oath of canonical obedience to (*2025 Appeal of Rev Gail Orchard* 31)
- powers recognised under *Constitution* (*2007 Women Bishops*)
- responsibility to obey *Constitution* (*1991 Eleven Questions* (Archbishop Rayner, Tadgell J); *2020 Wangaratta Blessing* 242-3)

Book of Common Prayer and Ordinal

- extent to which presently binding (*2020 Wangaratta Blessing*)
- 'permitted deviations' (*1972 Permitted Deviations: 2020 Wangaratta Blessing* 46). See also Words and phrases in the Constitution, 'principle of doctrine or worship [in the BCP]'
- power of General Synod to authorise alternative prayer book (*1976 An Australian Prayer Book*, *1985 Admission of Women to Holy Orders re Prayer Book Usage*; *2020 Wangaratta Blessing* 116)
- solemnisation of matrimony (*Wangaratta Blessing* 73 ff)

Canons of 1603 (*1991 Eleven Questions re Women's Ordination* (Cox J); *2007 Women Bishops*; *2020 Wangaratta Blessing* 91, 106, 108, 117)

- capacity of General Synod to abrogate (*1985 Admission of Women to Holy Orders re Prayer Book Usage*)

Canons of General Synod

- inconsistency with diocesan ordinance (*Constitution s 30*) (*2018 Newcastle Clergy Discipline*)
- *Canon Concerning Services 1992* (*2020 Wangaratta Blessing*)
- *Lay Assistants at Holy Communion Canon 1973* (*2010 Administration of the Lord's Supper 71-75*)
- *Marriage of Divorced Persons Canon 1981* (*1980 Marriage of Divorced Persons*; *2020 Wangaratta Blessing 121-2, 282*)
- *Matrimony (Prohibited Relationships) Canon 1981* (*Wangaratta Blessing 111*)
- *National Register Canon 2004* (*2007 Special Tribunal*)
- *National Register Canon 2007* (*2010 National Register Canon 2007*)
- *Offences Canon 1962* (*2020 Wangaratta Blessing 243*; *2018 Newcastle Clergy Discipline*; *2025 Appeal of Rev Gail Orchard*)
- *Ordination Service for Deacons Canon 1985* (*2010 Administration of the Lord's Supper 27-61, 89-114*)
- principles of interpretation (*2025 Appeal of Rev Gail Orchard*)
- *Special Tribunal Canon 2004* (*2007 Special Tribunal*)
- *Special Tribunal Canon 2007* (*2010 Special Tribunal*)

Clergy

- amenability to charges in more than one diocese (*2018 Affiliated Churches 95-101*)
- canonical obedience to Bishop of more than one diocese is problematic (*2018 Affiliated Churches 82*)
- entry into same-sex marriage (*2020 Newcastle Clergy Discipline 47, 51, 62-4*)
- general (*2017 Slater 2-3, 120*)
- impact of diocesan licence (*2018 Affiliated Churches 101*)
- debatable 'principle of advancement/progression' in ordination. See Ordination
- obligation to conform to rules of liturgy (*2010 Administration of the Lord's Supper 21-23*)
- offences (*2020 Newcastle Clergy Discipline*; *2025 Appeal of Rev Gail Orchard*)

Communion with Church of England in England and with other Christian communities (*2018 Affiliated Churches 28, 62-73*)

Constitution of Anglican Church of Australia

- bills for altering and conditions added by GS (*1981 Admission of Women to Holy Orders*)
- binding effect on laity, clergy and diocesan synods (*1991 Eleven Questions* (Archbishop Rayner and Tadgell J); *2018 Affiliated Churches 73*; *2017 Slater 48*)
- form of diocesan assent ordinance (*1989 Women Deacons and Membership of General Synod*)
- history of formation (*1989 Melb Ordination of Women to the Office of Priest Act 19-23*)
- impact on legislative authority of dioceses (*1991 Eleven Questions*; *2007 Special Tribunal*)
- whether interpretation issues assisted by reference to Greek and Latin (*1989 Women Deacons and Membership of General Synod*)
- See also Words and Phrases in the *Constitution*

Deacons

- baptising (*2010 Administration of the Lord's Supper* 101-106)
- functions (*1997 Celebration of Holy Communion*)
- may assist but not celebrate Holy Communion (*1997 Celebration of Holy Communion*; *2010 Administration of the Lord's Supper*)
- solemnising marriage (*2020 Wangaratta Blessing* 94)
- preaching (*2010 Administration of the Lord's Supper* 107)
- women See Women

Dioceses

- chancellors (*2020 Wangaratta Blessing* 262-271)
- conflict between ordinance and canon of General Synod. See General Synod 'inconsistency'
- diocesan tribunal (*2017 Slater* 144-164; *2018 Affiliated Churches* 95-99; *2020 Newcastle Clergy Discipline*; *2018 Affiliated Churches* 93-101)
- Diocese of Adelaide (*1991 Eleven Questions* (Cox J))
- Diocese of Canberra and Goulburn (*1991 Eleven Questions* (Cox J))
- Diocese of North Queensland (*1991 Eleven Questions* (Cox J))
- Dioceses in Victoria subject to the *Church of England Act 1854 (Vic)* (*1989 Melbourne Ordination of Women to Office of Priest Act*; *2020 Wangaratta Blessing* 59)
- disciplinary tribunals (*2020 Newcastle Clergy Discipline*)
- extra-territorial dealings (*1989 Melbourne Ordination of Women to Office of Priest Act* 26; *2017 Slater* 119-121; *2018 Affiliated Churches*),
- legislative authority under ACA Constitution (*1989 Melb Ordination of Women to the Office of Priest Act*; *2007 Special Tribunal*; *2017 Slater* 8, 119)
- limited stand-alone authority to abrogate inherited canon law, at least as to ritual or ceremonial (*1991 Eleven Questions*; *2020 Wangaratta Blessing* 43-124)

Disciplinary and professional standards tribunals, necessity to satisfy themselves as to jurisdiction (*2017 Slater*; *2025 Appeal of Rev Gail Orchard* (Meek J))

Divorce and remarriage (*1974 Marriage of Divorced Persons Canon* [this Determination was reversed in 1980], *1980 Marriage of Divorced Persons*; *2020 Wangaratta Blessing* 117-122)

Doctrine, liturgy and discipline compared and contrasted (*2020 Wangaratta Blessing* 5, 122, 156, 217, 223)

Ecclesiastical offences (*2017 Slater*; *2020 Newcastle Clergy Discipline*; *2025 Appeal of Rev Gail Orchard*)

Episcopal Standards regime (*2007 Special Tribunal*; *2017 Slater*; *2020 Newcastle Clergy Discipline*)

Eucharist. See Holy Communion

General Synod

- authority to amend inherited canon law and depart from BCP (*1985 Admission of Women to Holy Orders re Prayer Book Usage*; *1987 Ordination of Women to the Office of Deacon Canon*; *1991 Eleven Questions*; *Women Bishops* 124; *2020 Wangaratta Blessing* 59, 124)
- female members of clergy (*1981 Admission of Women to Holy Orders*; *1989 Women Deacons in General Synod*)
- House of Bishops does not include bishop administrators (*2017 Bishop Administrators*)
- 'inconsistency' between GS canon in force in a diocese and an ordinance of that diocese (*1991 Eleven Questions re Women's Ordination*; *2017 Slater*; *2020 Newcastle Clergy Discipline*)
- matters within exclusive jurisdiction of GS (*1991 Eleven Questions re Women's Ordination*; *1997 Celebration of Holy Communion by Deacons or Lay Persons*; *2010 Administration of the Lord's Supper*; *2018 Affiliated Churches* 64-5, 72, 84. See also Name of Anglican Church of Australia)

Holy Communion (*1997 Celebration of Holy Communion*; *2010 Administration of the Lord's Supper*)

Laity

- bound by Constitution if 'members of this Church' (*2018 Affiliated Churches* 73)
- celebrating Holy Communion (*1997 Celebration of Holy Communion by Deacons or Lay Persons*; *2010 Administration of the Lord's Supper*)
- involvement in services (*1997 Celebration of Holy Communion*)
- sanctions against (*2020 Wangaratta Blessing* 224-5)

Lay and diaconal presidency is consistent with Constitution, but only pursuant to a canon of GS (*1997 Celebration of Holy Communion*)

Marriage

- divorce See Divorce and Remarriage
- history (*2020 Wangaratta Blessing*)
- impediments (*2020 Wangaratta Blessing*)
- recognition of marriages not solemnised in ACA (*2020 Wangaratta Blessing* 19, 63, 95-103)
- same-sex marriage (*2020 Wangaratta Blessing*; *2020 Newcastle Clergy Discipline* 47)
- solemnisation (*2020 Wangaratta Blessing*)

Name of Anglican Church of Australia

- passing off and reputational risk (*2018 Affiliated Churches* 84, 102)

Nexus with Church of England in England pre-1962 (*1991 Eleven Questions* (Cox J, Tadgell J); *2020 Wangaratta Blessing* 92)

Ordination

- progression issues (*1985 Admission of Women to Holy Orders re Prayer Book Usage*; *1987 Ordination of Women to the Office of Deacon Canon* 1985; *1991 Eleven Questions* (Cox J)); *2007 Women Bishops*)

Practice and procedure of Appellate Tribunal

- AT discretion not to answer any or all questions (Rule 17 of *AT Rules*) (1997 *Conduct of Church Services*; 2010 *Administration of the Lord's Supper*; 2018 *Affiliated Churches*; 2020 *Wangaratta Blessing* 285; 2020 *Newcastle Clergy Discipline* 46, 60)
- costs orders (1989 *Women Deacons and Membership of General Synod*; 1989 *Ordination of Women to the Office of Priest Act*)
- form of questions referred (2010 *Administration of the Lord's Supper*; 2020 *Newcastle Clergy Discipline* 58; 2020 *Wangaratta Blessing* 182)
- interventions and applications to have submission considered (1989 *Women Deacons and Membership of General Synod*; 2010 *Administration of the Lord's Supper*; 2020 *Wangaratta Blessing* 2-3)
- oral or written submissions, submissions in disrespectful or jury advocacy terms (1987 *Ordination of Women to the Office of Deacon Canon*; 1989 *Women Deacons in General Synod*; 1989 *Ordination of Women to the Office of Priest Act*; 2020 *Wangaratta Blessing*)
- questions that are more apt to be addressed in disciplinary charges (2020 *Newcastle Clergy Discipline* 61-3)
- recusal and conflicts of interest ((2007 *Women Bishops*; 2020 *Wangaratta Blessing* 260-277). See also Appellate Tribunal, recusal issues and processes

Priests and priesthood (1997 *Celebration of Holy Communion*)

Professional Standards regime (2017 *Slater*; 2018 *Affiliated Churches* 100-102)

Red Book Case (1991 *Eleven Questions* (Cox J); 2020 *Wangaratta Blessing* 160)

Ruling Principles and Fundamental Declarations contrasted (2020 *Wangaratta Blessing*)

Scripture

- as 'ultimate rule and standard of faith' (*Constitution*, s 2 and Article 6) (2020 *Wangaratta Blessing* 162, 173, 176-177, 193ff)
- not apt to be judicially interpreted by AT (1987 *Ordination of Women to the Office of Deacon Canon*; 2020 *Wangaratta Blessing* 199, 214, 248)

Special Tribunal

- role, standing to promote charges (2007 *Special Tribunal*; 2010 *National Register*)

Thirty Nine Articles (2020 *Wangaratta Blessing*)

Women

- ordination (*Opinions of 1980, 1981, 1985, 1987*; 2010 *Eleven Questions re ordination of Women*; 2020 *Wangaratta Blessing* 146-147, 178)
- clerical members of General Synod (1981 *Admission of Women to Holy Orders*; 1989 *Women Deacons in General Synod*)
- election and confirmation as bishops (2007 *Women Bishops*)

Words and phrases in the *Constitution* and GS Canons

- 'admonition' in *Offences Canon 1962* (2025 *Appeal of Rev Gail Orchard*)
- 'affects good order and government within a diocese' (s 30) (2007 *Special Tribunal*; 2010 *National Register*; 2010 *Special Tribunal Canon 2007*)
- 'Book of Common Prayer' (2020 *Wangaratta Blessing* 10-12)
- 'breaches of faith ritual ceremonial or discipline' (2020 *Newcastle Clergy Discipline*)
- 'canonical fitness' (1991 *Eleven Questions*; 2007 *Women Bishops*)
- 'Christian Faith as professed...from primitive times' (2020 *Wangaratta Blessing* 185-192)
- 'commands of Christ' (1991 *Eleven Questions re Women's Ordination*; 2020 *Wangaratta Blessing* 74, 184, 240-253)
- 'conduct...which would be disgraceful or productive of scandal' in *Offences Canon 1962* (2025 *Appeal of Rev Gail Orchard*)
- 'diocesan tribunal' (2017 *Slater* 144-164; 2018 *Affiliated Churches* 95-99; 2017 *Slater* 144-164; 2018 *Affiliated Churches* 93-101; 2020 *Newcastle Clergy Discipline*)
- 'discipline' (1991 *Eleven Questions re Women's Ordination* (Cox J); 2007 *Special Tribunal*; 2017 *Slater* 139ff; 2020 *Newcastle Clergy Discipline*)
- 'doctrine [of ACA]' (1980 *Marriage of Divorced Persons*; 1987 *Ordination of Women to the Office of Deacon Canon*; 2007 *Special Tribunal*; 2020 *Wangaratta Blessing* esp 148-152, 198)
- 'faith of the [ACA]' (2020 *Wangaratta Blessing*)
- 'habitual and wilful neglect of ministerial duty' in *Offences Canon 1962* (2025 *Appeal of Rev Gail Orchard*)
- 'importing the masculine' (s 74(6)) (1989 *Women Deacons and Membership of General Synod*)
- 'law of the Church of England' (1991 *Eleven Questions*; 2007 *Women Bishops*; 2020 *Wangaratta Blessing* 92, 123)
- 'matter involving doctrine' (1980 *Marriage of Divorced Persons*; 2020 *Wangaratta Blessing* 121, 141). See also Appellate Tribunal, consultation with House of Bishops.
- 'member of this Church' (*Affiliated Churches* 28)
- 'order and good government of the Church' (2020 *Wangaratta Blessing* 289)
- 'principle of doctrine or worship in the [BCP]' (s 4) (1985 *Ordination of Women*; 1987 *Ordination of Women to the Office of Deacon Canon*; 1997 *Celebration of Holy Communion*; 2007 *Special Tribunal*; 2020 *Wangaratta Blessing* 46, 57, 82, 139)
- questions arising 'under this Constitution' (1989 *Melbourne Office of Priest Act*; 1991 *Eleven Questions re women's Ordination*; 1997 *Conduct of Church Services*; 2020 *Wangaratta Blessing* 9; 2020 *Newcastle Clergy Discipline* 29, 56)
- 'ritual or ceremonial' (1991 *Eleven Questions re Women's Ordination* (Cox J, Archbishop Rayner); 1997 *Celebration of Holy Communion*; 2017 *Slater* 139; 2020 *Wangaratta Blessing* 43-55, 123-4, 141)
- 'rule' (2007 *Special Tribunal*)
- 'statements' (1987 *Ordination of Women to the Office of Deacon Canon* (Cox J and Archbishop Rayner); 2020 *Wangaratta Blessing* 137)
- 'union with other Christian communions' (*Constitution* s 26) (2018 *Affiliated Churches*)