

# The Line in the Sand

THE APPELLATE TRIBUNAL OPINION  
AND THE FUTURE OF THE  
ANGLICAN CHURCH IN AUSTRALIA



EDITED BY ROBERT TONG, CLAIRE SMITH AND MIKE LEITE

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*The Line in the Sand:*

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# The line in the sand – Introduction

Dear reader,

Our purpose in publishing this volume is to alert Australian Anglicans and members of General Synod to a turning point in our history. With recent events a line has been drawn in the sand, and Christian orthodoxy would have us stand firmly on one side in guarding the good deposit entrusted to us (2 Tim 1:14).

For Australian Anglicans, the publication of the Majority Opinion<sup>1</sup> of the Appellate Tribunal of the Anglican Church of Australia on 11 November 2020 will be as divisive as the dismissal of a Prime Minister.<sup>2</sup> The Majority Opinion gave legal validation to a liturgy which can be used to bless a same-sex marriage for the first time in the history of the Anglican Church of Australia. Following the publication of the Appellate Tribunal's Opinion, the Primate immediately called for restraint from diocesan bishops and clergy in their use of this new liturgy until the next meeting of General Synod (which had been scheduled for 31 May 2021, but due to COVID-19 is now expected to meet from 8 May to 13 May 2022).

However, only 10 days after the publication of the Opinion, the recently retired Bishop of Wangaratta, John Parkes, blessed the same-sex marriage of former Archdeacon John Davis and the Rev Rob Whalley using the service which was the subject of the legal challenge.<sup>3</sup>

In a letter dated 16 July 2021 to 'Episcopal Colleagues' the Primate, Archbishop Geoff Smith, urged:

restraint to enable clear air for discussion at the next meeting of the General Synod which will be our first opportunity to discuss the change to the Marriage Act and the opinion of the Appellate Tribunal.

1 'Reasons of the President, Deputy President, Archbishop Aspinall, Professor Croft and Bishop Weatherill: Opinion of the Tribunal', *Primate's References re Wangaratta Blessing Service* (11 November 2020) Appellate Tribunal of the Anglican Church of Australia 1–65 ('Majority Opinion'). The Majority and Minority Opinions and the submissions can be found at <https://anglican.org.au/governance/tribunals/appellate-tribunal-current-matters/appellate-tribunal-reference1/>.

2 The Governor-General's dismissal of Prime Minister Gough Whitlam on 11 November 1975 dramatically divided Australia.

3 This happened on 21 November 2020.

The letter goes on to say:

We need to be clear that the opinion of the Appellate Tribunal has not changed the doctrine of the Anglican Church of Australia. The Appellate Tribunal can't change the doctrine of anything. All the Appellate Tribunal can do in these matters is respond to questions concerning the Constitution of the Anglican Church of Australia and the Canons adopted by the General Synod. There is no legitimate claim that the Appellate Tribunal has changed in any way the doctrine of our Church.

The question must be asked therefore, is the Primate correct? That is, has the doctrine of the Anglican Church of Australia changed? If you answer the question by looking for alterations in the constitutional formularies of the Anglican Church of Australia, the answer must be 'no'. If instead, the answer is looked for in the actions of some bishops, the answer must be 'yes'. As already noted, Bishop Parkes acted within weeks after the Opinion was delivered. Furthermore, the Bishop of Newcastle, Peter Stuart told his diocese:

The Opinions of the Appellate Tribunal came as a surprise. It effectively said, **'within the Anglican Church of Australia it is possible for a same-sex couple who have been married, by a civil celebrant, to receive a blessing from a priest or bishop'**.<sup>4</sup>

Now as 2022 begins, the ABC reports a service of blessing of a same-sex marriage in Albury which included the reading of a letter from the Diocesan Bishop, Clarence Bester, commending the service.<sup>5</sup>

The Anglican Church of Australia is now at a crossroads. Do we maintain, foster and proclaim standards of behaviour as revealed in the Scriptures, or do we travel down the wide path to perdition?

The Appellate Tribunal, in its Majority Opinion, has effected a change in the doctrine of the Anglican Church of Australia, or at the very least a change in the understanding of doctrine. This change can be seen in the subsequent actions and statements of several Bishops, notwithstanding the Primate's statement to the contrary. In doing this the Tribunal has effectively usurped the role of the General Synod. That is, constitutionally speaking, doctrinal change should *only* be by canon of the Synod made after due consideration and debate, *not* by a side wind from the Tribunal.

There is no doubt that General Synod has the constitutional power to address this change. This is where the current volume comes into play. It is our prayer that these essays will give you biblical, legal, theological and pastoral considerations to support initiatives in the upcoming General Synod to state unequivocally the orthodox doctrine of the Church and stand against the illegitimate usurping of the General Synod's authority by the Appellate Tribunal.

What will you find in this volume?

We begin with an introduction to what the Tribunal did, its composition, and the part it plays in the constitutional arrangements of the Anglican Church of Australia.

4 Ad Clerum 26 November 2020.

5 K Smyrk, 'Same-sex couple have marriage blessed in Albury Anglican church after two-year battle', ABC, 3 January 2022, accessed 3 January 2022.



This will be followed by some biblical considerations regarding the Bible's teaching on marriage, sex, belonging and homosexuality.

Next comes the legal considerations. First, Michael Stead provides an exposition on the meaning of 'doctrine' in the Constitution. And second, lawyers Neil Foster and Alex Milner give comment on the Majority and Minority Opinions.

We then come to the theological considerations and the heart of the issue confronting us: what does the Bible reveal of the mind of God? And, what continuing relevance is this to us? A critique of the underlying theology in both Opinions is given by Mark Thompson and Mark Earngey. Lionel Windsor follows by telling us how the Board of Assessors did their work and what notice was taken of this by the Appellate Tribunal in forming their Majority Opinion.

At this point, Kanishka Raffel helps us in thinking through the pastoral considerations. In the Minority Opinion, Ms Gillian Davidson says:

I know that this separate opinion will cause unease and pain to some, particularly to those who have felt saddened, denied or malnourished by their experience of the church. I lament any pain in the same way I lament having to break the news of a hard or difficult truth to someone I love. And yet I do so trusting that the word of God is for our good, and mindful that God is a merciful God who delights to bless his people graciously and faithfully and the opinions of this Tribunal will not alter that fact.<sup>6</sup>

Kanishka Raffel picks up this concern and helps us to understand the pastoral dimensions of the issue at hand. Our mission is to bring the grace of God in the Lord Jesus to all people, including the LGBTIQ+ community. We will do a disservice to the gospel if we fail to consider how best to minister to those who identify as LGBTIQ+ in our churches and communities.

Finally, we come to the international considerations. As one former Dean of St Paul's Cathedral, London, once said, 'no man is an island entire of itself' (John Donne 'Meditation XVII'). So we conclude with several contributions which look at the wider context: what happened in New Zealand (Dave Clancy); what is happening in England (Andrew Symes); what might it look like in Australia (Glenn Davies)?

Why is it important for you to be informed by such considerations? It is due to the consequences that might flow from these Opinions. Following the forum of the General Synod to be held in May 2022, some dioceses may adopt the same-sex blessing innovation, while some will hold to orthodoxy. This will result in a fracture. Several years ago, General Synod made provision for the ordination of women as priests in the Anglican Church of Australia. This development created a state of impaired communion across the Australian Church since the ordained status of women ministers is not uniformly recognised in all Australian dioceses. This is not insignificant. The practical consequences of that decision continue to have an impact on the work of the Anglican Church in Australia. However, we have learnt to live together, as ordination is a matter of order, rather than a matter that affects one's salvation.

By contrast, the recent unilateral move by the Tribunal poses an entirely different challenge. It would be a mistake to think of this innovation in the same way as women's ordination, as it will result in a fracture of an entirely different order. The blessing of same-

<sup>6</sup> 'Opinion of Ms Gillian Davidson', *Primate's References re Wangaratta Blessing Service* (11 November 2020) Appellate Tribunal of the Anglican Church of Australia 68-122 ('Minority Opinion') [26].

sex marriages cannot be accommodated in the same way, even if this is what those pushing for this innovation hope for. Blessing same-sex marriages would not be simply adding a new feature to the life of the Church but represents a departure from orthodox faith. It is a line in the sand because it relates to issues of salvation.

If same-sex liturgical blessings become part of the life of a diocese, the unity of the Anglican Church of Australia, as expressed in the opening sections of the Constitution, will be meaningless. Instead of the hard-won doctrinal unity of the Church, after a long and tortured gestation, it would devolve into a mere organisational unity devoid of theological content. True ecclesiastical unity is founded on *theological* unity. The Constitution itself bears witness to this in ss 1–3 which is headed ‘Fundamental Declarations’ and s 4 headed ‘Ruling Principles’.

Indeed, these principles have been embedded in orthodox Anglicanism since its inception. One example from the Catechism of the *Book of Common Prayer* will suffice to illustrate this point:

*Question:* What is required of persons to be baptised?

*Answer:* Repentance, whereby they forsake sin; and Faith, whereby they stedfastly believe the promises of God made to them in that Sacrament.

The Majority Opinion, however, seems to have separated the complementary elements of salvation: faith in God and repentance from sin, by ignoring what the Bible describes as sinful behaviour.

Moreover, it will not be business as usual for diocesan involvement in national governance structures. These will come under critical review, and participation in the Holy Communion, as the visible expression of unity, may not be possible. At ground level, some congregations in dioceses which adopt the same-sex blessing innovation may seek episcopal oversight elsewhere.

Looking more widely, does the Majority Opinion point to the development in the Australian Church of the permanent division which has occurred in New Zealand, Canada, the United States, Brazil, England and Scotland? The Church in Wales may well join this group. All six bishops ‘unreservedly and collectively’ supported the canon law amendment on 6 September 2021 to authorise a same-sex blessing service.

Unlike differing views on the dismissal of Whitlam in 1975, the response of General Synod members and the wider Anglican Church of Australia to the Appellate Tribunal Opinion will have great consequences. We love the Anglican Church, our history, our historic commitment to the orthodox Faith and our potential to remain a light for the world through our witness to the gospel of Christ.

We trust you share that love, and so we offer this volume in the hope that it will equip you for the decisions that lie ahead.

Robert Tong  
Claire Smith  
Mike Leite

Editors  
March 2022

# The Appellate Tribunal Opinion

*A bird's eye view*

ROBERT TONG

The following essay by Robert Tong is adapted from an article first published on the Anglican Church League website on 12 November 2020 (the day after the release of the Opinions of the Appellate Tribunal).

**O**n 11 November 2020, the Primate (Archbishop Geoff Smith) released on the General Synod website the Opinions of the Appellate Tribunal and references made by him to the Tribunal for their Opinion on the validity or otherwise of legislation made by two dioceses of the Anglican Church of Australia.

Firstly, the 2019 synod of the Diocese of Wangaratta passed legislation to authorise a service to bless marriages conducted in accordance with the *Marriage Act 1961* of the Commonwealth of Australia. Before December 2017, marriage in Australia was defined as ‘the union of a man and a woman to the exclusion of all others, voluntarily entered into for life’. After amendment to the *Marriage Act*, the definition became ‘**the union of 2 people to the exclusion of all others, voluntarily entered into for life**’. A consequence of the change is that some marriages, validly contracted under the law, are not recognised by the Anglican Church of Australia. The essence of the questions put to the Appellate Tribunal was, Could the Wangaratta service be used to bless *any* legally valid marriage?

Secondly, the 2019 synod of the Diocese of Newcastle passed legislation in similar terms to the Wangaratta Diocese authorising the use of a blessing service. However, as the Bishop did not provide his assent to the legislation within the required 30 days, the legislation lapsed. That 2019 synod also amended the jurisdiction of its diocesan tribunal. The jurisdiction was amended to remove from the diocesan tribunal power to entertain complaints about clergy who had used the blessing service. The questions put to the Appellate Tribunal focused on the validity of this change.

The Appellate Tribunal is established by the General Synod Constitution. Tribunal membership consists of three diocesan bishops and four lawyers elected by members of



General Synod. Once elected they remain until retirement at 75 or earlier if a bishop retires from diocesan office.

The Tribunal is the final forum in Australia for discipline appeals; these are rare. A second function is to decide if General Synod legislation is consistent with the Constitution; these are infrequent. A third function is to provide advisory opinions on questions arising under the Constitution which may be referred to it by the Primate or members of General Synod.

On the Wangaratta and Newcastle references, the Tribunal invited written submissions from interested parties. The submissions can be accessed on the General Synod website.<sup>1</sup> The Tribunal then conducted their deliberations in private. At some point in these deliberations, the Tribunal decided to seek the opinion of the House of Bishops and the Board of Assessors by utilising the provision in s 58 of the Constitution. By that section of the Constitution, if the Tribunal is not agreed on a question of doctrine, it can seek the opinion of the House of Bishops and the Board of Assessors.

The House of Bishops comprise the 23 diocesan bishops, absent those who are members of the Tribunal. The Assessors are a panel of seven clergy elected by the General Synod. On the four questions asked, the House of Bishops provided a unanimous reply. The same questions put to the Board of Assessors also resulted in a unanimous response. The responses can be accessed on the General Synod website. The Board of Assessors' response is an appendix to this volume. The theological thrust of the reports from the House of Bishops and the Board of Assessors was that the underlying theology in the blessing service was contrary to the Fundamental Declarations and Ruling Principles of the Anglican Church of Australia.

The President of the Tribunal, the Hon Keith Mason AO QC, joined by the Hon Richard Refshauge, the Most Rev'd Dr Phillip Aspinall, Professor the Hon Clyde Croft AM SC and the Rt Rev'd Garry Weatherill delivered a joint opinion, the 'Majority Opinion', upholding the Wangaratta legislation. Ms Gillian Davidson gave a separate opinion holding that the legislation was contrary to the Fundamental Declarations and Ruling Principles of the Anglican Church of Australia. The seventh member of the Tribunal, the Rt Rev'd John Parkes AM, recused himself from participation as he was the diocesan bishop when the Wangaratta legislation was passed.

In summary, the majority, in a lengthy opinion concluded that the meaning of the term 'doctrine' in the Constitution is to be narrowly interpreted. That is, in the Constitution, 'doctrine' is the teaching on the faith which is necessary to salvation. However, the Majority Opinion says:

In our view, the matters in the present reference do not involve issues of faith or doctrine properly so called any more than the dispute over female ordination. The contending views about “**blessing**” same-sex marriages are strongly held. But, with respect to some of the recent rhetoric, and the actions taken abroad by some bishops of this Church, the blessing of same-sex marriages does not [necessarily] involve denial of God or repudiation of the Creeds or rejection of the **authority** of Holy Scripture or apostasy on the part of bishops or synods prepared to support such measures. ([180] emphasis original)

<sup>1</sup> <https://anglican.org.au/governance/tribunals/appellate-tribunal-current-matters/appellate-tribunal-reference1/>.

Given that questions of doctrine were in play as well as theological answers from the House of Bishops and the Board of Assessors, it is curious that the two Tribunal bishops did not provide their own ‘theological’ addendum to the Majority Opinion. The mixed composition of the Tribunal contemplates that lawyers and bishops will make their distinctive contributions of theology and law to any question put to it. Any reader looking for a separate theological contribution in the Majority Opinion or meaningful engagement by the Majority Opinion with the opinions of the House of Bishops or Board of Assessors, will look in vain.

By contrast, the Minority Opinion of Ms Gillian Davidson asserts that ‘doctrine’ should be given the meaning intended by the framers of the Constitution, as a standard of our unity and our coherence as a distinctly Anglican body of believers. Consistent with the unanimous opinions of the House of Bishops and Board of Assessors, she concludes that same-sex practice is contrary to the faith and practice of the Church; persistent, unrepentant sin precludes a person from God’s kingdom; and God cannot bless that which is named as sin.

On the Newcastle reference, the validity of reducing the jurisdiction of the diocesan tribunal was the point at issue. The amended jurisdiction precludes defined categories of conduct from being the subject of a charge in the diocesan tribunal. The Majority Opinion held that the amending legislation was a valid exercise of the constitutional power of the diocesan synod. Ms Davidson took the view that the diocesan synod’s power may only be exercised ‘for the order and good governance of this Church within the diocese’ and that this legislation did not meet that purpose.

More detailed examinations of the Appellate Tribunal’s work are in subsequent chapters in this volume.

It is apposite to add a word about the Constitution of the Anglican Church of Australia.<sup>2</sup> The text of the Constitution is a schedule to State and Territory Acts of Parliament giving the Constitution legal force and effect in relation to property decisions of the General Synod. This Constitution was some forty years in the making. The extensive checks and balances in the document are testament to the compromises needed to resolve competing theological and polity concerns.

The composition and function of the Appellate Tribunal was one focus of attention in the many constitutional debates in diocesan and General synods over the forty years. Many argued that the Tribunal should consist only of bishops or at least a majority of bishops as clergy discipline and theological interpretation would be a prime concern of the Tribunal. In 1955, the then Bishop of Adelaide ‘hoped the Appellate Tribunal would not meet once in fifty years...’<sup>3</sup>

Now, in 2020, the current Archbishop of Adelaide, who is also the sitting Primate of the Anglican Church of Australia, is being forced to deal with a situation created by the Tribunal; a situation that has the potential to shatter the unity of the Church in this nation.

2 For an account of the making of the Constitution, see J. Davis, *Australian Anglicans and their Constitution* (Acorn, 1993).

3 Davis, *Australian Anglicans* 173.





## BIBLICAL CONSIDERATIONS



# Family ties

## *Marriage, sex and belonging in the New Testament*

CLAIRE SMITH

The questions currently facing the Anglican Church of Australia about the nature of marriage are questions that can ultimately only be answered by the Scriptures, since it is in Scripture that we know the will and purposes of God, who instituted marriage from the beginning, and where, as his children, we learn all things necessary for salvation and Christian obedience. The next two chapters address the teaching of Scripture on marriage and same-sex sexual activity.

These next two chapters are adaptations of essays by Claire Smith and Michael Stead previously published in the book *Marriage, Same-Sex Marriage and the Anglican Church of Australia: Essays from the Doctrine Commission* (2019), which are reproduced with permission of the publisher.



*Then the angel said to me, 'Write this: Blessed are those who are invited to the wedding supper of the Lamb!' And he added, 'These are the true words of God.'* Rev 19:9

*I saw the Holy City, the new Jerusalem, coming down out of heaven from God, prepared as a bride beautifully dressed for her husband.* Rev 21:2



## The heavenly marriage

Marriage is mentioned explicitly or implicitly in most books in the New Testament.<sup>1</sup> It is evident in the mention of specific married couples.<sup>2</sup> It features in historical narratives.<sup>3</sup> It is the focus of specific teaching.<sup>4</sup> It is the backdrop to discussions of singleness and celibacy, widowhood, divorce, and adultery.<sup>5</sup> It is used to illustrate theological truths.<sup>6</sup>

That is, the New Testament is not silent about marriage, neither is marriage peripheral. It is both background noise and headline news. And it is good. Human marriage is blessed by Jesus' presence at the marriage in Cana where he performed his first messianic sign (John 2:1–11),<sup>7</sup> and elsewhere its practice and purpose are embraced, endorsed and explained with rich theological themes.<sup>8</sup>

So that when the New Testament ends with a marriage – the eschatological marriage of the Lamb and his bride as the culmination of God's redemptive purposes foreshadowed by Isaiah (Isa 62:4–5) – it does not come as a surprise or beg explanation (Rev 19:6–9; 21:2, 9–10). We know what marriage is, and that it is joyous, good, pure and beautiful – at least, this heavenly marriage is, notwithstanding the weaknesses of human marriage this side of the fall.

The New Testament consistently points towards this end-time marriage. In the Gospels, it is seen in the bridegroom sayings (Matt 25:1–13), including some where Jesus is identified as the groom (Matt 9:14–17; Mark 2:18–22; Luke 5:33–39; John 3:27–30), and in those parables where the kingdom is likened to a wedding banquet (Matt 22:1–14; Luke 14:7–24). It is glimpsed when Jesus assumes the role of the bridegroom-host meeting the needs of the guests at the wedding at Cana (John 2:1–11; cf. 3:27–30).<sup>9</sup> In the epistles, Paul speaks of having betrothed the Corinthian Christians to one husband, Christ (2 Cor 11:2),<sup>10</sup> and uses the marriage of Christ and the church as the archetype for human marriage (Eph 5:23–32).

Yet despite being thematically and theologically embedded in the New Testament, there are clearly cultural aspects to the practice of marriage. These include the betrothal of Joseph and

1 It is not found in Galatians, Philippians, 1 & 2 Thessalonians, Philemon, 1, 2, & 3 John. However, references to sexual immorality in the NT assume a common understanding of sanctioned sexual activity within heterosexual marriage: Gal 5:19; 1 Thess 4:3–7. The following footnotes cite only one reference per book, however, most books include multiple references.

2 E.g., Acts 5:1–10; 2 Tim 4:19.

3 E.g., Matt 1:18–25; John 4:16–18.

4 E.g., Col 3:18–19; 1 Tim 5:14; Titus 2:3–5; Heb 13:4; 1 Pet 3:1–7.

5 E.g., Mark 10:2–12; Luke 20:27–36; 1 Cor 7:1–40; Jas 1:27; 2 Pet 2:14; Jude 7.

6 E.g., Rom 7:1–3; 2 Cor 11:2; Eph 5:22–33; Rev 21:2, 9–10.

7 Cf. B

8 In this way, marriage is inherently different from slavery. Slavery is assumed as an existing social practice, which the New Testament writers seek to regulate (Eph 6:5–9; Col 3:22–4:1; 1 Tim 6:1–2; Titus 2:9–10; 1 Pet 2:18). Slavery as an institution is not blessed or endorsed or grounded in creation or theological themes. Unlike marriage, slaves are to gain their freedom if that is possible (1 Cor 7:21). The only slavery about which the NT speaks positively is our slavery to Christ in holy obedience (Rom 6:16–22; 1 Cor 7:23; Eph 6:6; 1 Pet 2:16).

9 D. A. Carson, *The Gospel According to John* (Leicester, England: Inter-Varsity Press, 1991), 172–73, cf. 169.

10 B. S. Rosner, *Paul, Scripture, and Ethics: A Study of 1 Corinthians 5–7* (Grand Rapids, MI: Baker Books, 1994), 132, also notes that '[s]piritual marriage imagery also lurks in the "atmosphere" of 1 Corinthians 7:32–35, where pleasing the Lord and pleasing one's marriage partner are compared.'

Mary which could only be ended by divorce (Matt 1:19),<sup>11</sup> the lamp-holding virgins awaiting the groom (Matt 25:1–10), certain conventions around wedding banquets, invitations and clothing (Matt 22:1–12), and, probably, a head-covering worn by wives symbolising marriage (1 Cor 11:4–10).<sup>12</sup> None of these are now part of our cultural practice of marriage.<sup>13</sup>

So, the question arises: Is the New Testament writers' treatment of marriage, including their understanding of sexual immorality<sup>14</sup> and the metaphor of the end-time marriage, simply a culturally located expression of God-ordained covenant-love relationships that can take different forms in different cultures?<sup>15</sup> Could it be that the sexual dimorphism of marriage as we meet it in the Bible is nothing more than a cultural trope?

To focus the question: Does the New Testament allow for marriage or sanction sexual relationships between two people of the same sex?

## Marriage from the beginning

Often these questions are approached, whether to argue for or against same-sex sexual activity and relationships, through a handful of texts in isolation from the rest of Scripture (i.e., Gen 19:1–38; Lev 18:22; 20:13; Rom 1:24–27; 1 Cor 6:9–11; 1 Tim 1:9–10; Jude 6–7).<sup>16</sup> But that is to miss the wood for the trees.

These are not isolated texts. They are part of the fabric of biblical revelation, which begins with a human marriage (Gen 2:23–24, cf. Gen 1:27) and ends with the marriage of the bride and the Lamb, and where the structure of the former is based on the latter.

In fact, there is a consistent understanding of marriage throughout the Bible – even with the many post-fall aberrations, including polygamy, adultery, divorce, and, with death, the experience of widowhood – namely, that marriage is the union of two people of opposing biological sex, and that this sexed complementarity is essential, not incidental, to the nature and purpose of marriage.

In the New Testament this is most clearly articulated in Jesus' response to the Pharisees as they sought to trap him by drawing him into disputes between rival rabbinical schools about the scope of Deuteronomy 24:1 and the grounds for divorce (Matt 19:3–9; Mark 10:2–12). Jesus knows the dissolution of marriage can only rightly be understood in light of

11 A. Köstenberger and D. W. Jones, *God, Marriage, and Family: Rebuilding the Biblical Foundations*, 2nd ed. (Wheaton, IL: Crossway Books, 2010), 375, fn. 13.

12 B. W. Winter, *Roman Wives, Roman Widows: The Appearance of New Women and the Pauline Communities* (Grand Rapids, MI: Eerdmans, 2003), 77–96.

13 Historical studies also suggest that girls typically married young (from 14 years on), whereas men were closer to 30. This would be unacceptable today (in fact, illegal). See S. Baugh, 'Marriage and Family in Ancient Greek Society', in *Marriage and Family in the Biblical World*, ed. K. M. Campbell, (Downers Grove, IL: InterVarsity Press, 2003), 107.

14 E.g., *porneia*, *moicheia*, *koitē*, *ekporneuō*.

15 E.g., Simon Taylor, 'A Positive Biblical Approach to Equal Marriage', *Modern Believing* 58.1 (2017): 41–53.

16 E.g., Nigel Wright (ed.), *Five Uneasy Pieces: Essays on Scripture and Sexuality* (Hindmarsh, SA: Australian Theological Forum, 2012), where the teaching of Genesis 1–2 on marriage, Jesus' teaching on marriage and divorce (Matt 19; Mark 10), apostolic instructions on marriage (1 Cor 7; Eph 5; 1 Pet 3), and the eschatological marriage of Revelation are not listed in the Index of Biblical References (pp 89–92).

its original nature and purpose before sin and brokenness corrupted the human heart, and the provision of divorce was needed. So, as we might expect, he begins there.

But he also does something unexpected. Instead of simply citing the explanation in Genesis 2:24 that follows the marriage of the first man and woman – equals of the same flesh and bone, with complementary sex and gender – he places that statement in the context of the even earlier statement that humanity was created by God in his image, male and female (Gen 1:27; Matt 19:4).

In doing so Jesus shows there is a creational logic to the nature of marriage.<sup>17</sup> It is not just that one person chooses to leave the family home and be joined to another, and their bodily sex is not significant. Rather, ‘from the beginning’ the Creator created humankind as sexually differentiated beings, male and female, and ‘for this reason’ a man and woman are joined in marriage – two equal and complementary image-bearers joined by God to be ‘one flesh’, united in a covenantal relationship unlike any other. One flesh in their exclusive sexual union, in the new family unit they create, in their companionship, and potentially, in offspring.<sup>18</sup>

That is, the very nature and purpose of marriage require that there be only two, and that the two are male and female. Moreover, the ability of human marriage to explain or reflect rich theological truths – such as the union of Christ and the church<sup>19</sup> – demands that the sex and gender differences within human marriage are real not illusory, stable not fluid, and fixed not interchangeable.

Note, too, that Jesus does not say ‘*in* the beginning’, which might allow for differences this side of Genesis 3, but ‘*from* the beginning’.<sup>20</sup> Despite the tragic effects of the fall, what God first intended for marriage is still now his design, in all cultures and all times.

It is not that other expressions of committed sexual partnerships were unknown in the ancient world. They were, including committed, consensual, same-sex peer relationships, and notions of same-sex marriage, and same-sex sexual orientation.<sup>21</sup>

Yet despite this, Jesus and the apostles after him maintain the enduring authority and goodness of God’s creation design for marriage as between one man and one woman, and as the only proper domain for the expression of sexual desire and intimacy (cf. Matt 5:28; Heb 13:4). More than that, they are not unaware or neutral about other types of sexual activity. Without exception, every reference to alternative sexual expression in the New Testament is negative, including every reference to same-sex sexual activity.<sup>22</sup>

17 Cf. 19:5 ‘Therefore’ (*heneka toutou*); 19:6 ‘So’ (*hōste*).

18 G. Wenham, *Genesis 1–15* (Waco, TX: Word, 1987), 71.

19 Other examples are the metaphor of the Lamb and his bride, and the structured relationships of man and woman (likely, husband and wife) and Christ and God, in 1 Cor 11:3. See R. E. Ciampa and B. S. Rosner, *The First Letter to the Corinthians*, PNTC, (Grand Rapids, MI: Eerdmans, 2010), 508.

20 Cf. *ap’ archēs*. Rightly, ESV. William Loader, *The New Testament on Sexuality* (Grand Rapids, MI: Eerdmans, 2012) 275, notes the words are both a reference to time, and ‘by implication to first principles of God’s will’.

21 E.g., Plato, *Sym*, 179D–180B; 181B; Aristotle, *Eth. Nic.* 1148b, lines 28–34; Suetonius, *Galba* 22; Photois, *Bibliothèque*, 94.77a–b (after Iamblichos); Suetonius, *Nero* 28. See Branson Parler, ‘Worlds Apart?: James Brownson and the Sexual Diversity of the Greco-Roman World’, *TrinJ.* 38NS (2017): 183–200. Preston Sprinkle, ‘Romans 1 and Homosexuality: A Critical Review of James Brownson’s *Bible, Gender, Sexuality*’, *BBR* 24.4 (2014): 515–28, here 522–27. Loader, *Sexuality*, 322–324.

22 Robert Gagnon, *The Bible and Homosexual Practice: Texts and Hermeneutics* (Nashville, TN: Abingdon Press, 2001), 87–90, 229–339.

Thus, when Paul traces the consequences of our rebellion and rejection of God through human history, sexual impurity – including same-sex sexual activity – is emblematic of the progressive spiritual and moral decline of all humanity (Rom 1:24–27). At each step, in judgment, God delivered humanity over to wrongly directed worship, lusts, passions and conduct.

The glory of God was exchanged for images resembling human beings, birds, animals and creeping things. The truth of God was exchanged for a lie and created things were worshipped rather than the Creator. Natural sexual relations (*phusikēn chrēsin*) were exchanged by females and males for those contrary to nature (*para phusin*). Men gave up natural relations with women and committed shameless acts with one another, and women did likewise with other women (cf. *homoiōs*).

But what ‘nature’ does Paul have in mind, and how do women and men act against it? It is not, as is sometimes claimed, that these sexual acts have no natural procreative potential.<sup>23</sup> Neither is it heterosexuals acting against their ‘natural’ orientation by engaging in homosexual acts.<sup>24</sup> It is not simply ‘excessive’ passion that is the issue.<sup>25</sup> The ‘nature’ Paul has in mind is the natural created order, which is evident in the many linguistic and thematic links to Genesis 1 that run through the text.<sup>26</sup> It is the way that God designed his creation to work.<sup>27</sup>

Accordingly, the sexual relations that are ‘contrary to nature’ are those that are contrary to the created order and God’s purposes for it as revealed in Scripture.<sup>28</sup> It is men and women doing with their own sex what God intended only to be done with the opposite sex<sup>29</sup> – and that within marriage, as the rest of Scripture makes clear.

This broader scriptural canvas lies behind Paul’s references to homosexual practice in 1 Corinthians 6 and 1 Timothy 1. Both texts identify the high spiritual stakes involved, not just for same-sex sexual activity, but also for other forms of unrepentant sin, including sexual immorality generally, idolatry, adultery, drunkenness, theft and greed. Indeed, those who do these things are unrighteous, and will not inherit the kingdom of God. Salvation itself is at stake.

Paul uses two words for same-sex sexual activity in 1 Corinthians 6:9; both function as plural nouns for people characterised by particular behaviour, and their proximity means that each helps interpret the other.

The first word (*malakoi*) in its broadest sense denotes ‘soft’ and could be used, for example, to describe clothing. The same word could also refer to a ‘soft’ or ‘effeminate

**The sexual relations that are ‘contrary to nature’ are those that are contrary to the created order and God’s purposes for it as revealed in Scripture.**

23 Rightly, Loader, *Sexuality*, 311. However, his broader claim that ‘we should feel free to reach different conclusions from Paul if the evidence suggests that this is appropriate’ (p 321) does not adequately recognise the authority of Holy Scripture, cf. p 499.

24 Loader, *Sexuality*, 313, 326. Sprinkle, ‘Romans 1 and Homosexuality’, 518–526.

25 Loader, *Sexuality*, 305–7, 312.

26 E.g., ‘ever since the creation of the world’ (v 19); ‘image’ and ‘likeness’ (v 23); ‘mankind and birds and animals and creeping things’ (v 23); ‘Creator’ (v 25); ‘female’ (vv 26, 27); ‘male’ (v 27). See esp. Gen 1:26–27.

27 Robert Jewett, *Romans*, Hermeneia (Minneapolis, MN: Fortress Press, 2007), 177.

28 Loader, *Sexuality*, 313–15.

29 Loader, *Sexuality*, 311.

person' and was used this way to refer to the passive male partner in a same-sex sexual act.<sup>30</sup>

The second (*arsenokoitai*) appears to be a new word Paul may have coined, as it has not been found in earlier texts from classical antiquity. It brings together two words – *arseno* (male) + *koitē* ('bed', often with sexual connotations) – which appear together side by side in Leviticus 20:13 (cf. 18:22) in the Greek Old Testament (LXX), in relation to God's prohibition of same-sex sexual activity.<sup>31</sup>

This background to the new word, and Paul's indebtedness to the Jewish Scriptures give us its meaning.<sup>32</sup> It refers to the active partner in male same-sex sexual acts, and includes consensual sexual acts between adults, and cannot be limited to cultic settings or pederasty.<sup>33</sup>

When Paul uses this same word (*arsenokoitais*) again in 1 Timothy 1:10, in the context of Old Testament law, same-sex sexual activity is again on view and – together with other forms of disobedience to the law – is proscribed as being contrary to sound doctrine, and the gospel. It refers to all same-sex sexual activity as a specific form of 'sexual immorality' (*pornois*), which is listed immediately beforehand, and cannot be limited to exploitative practices of the slave trade.<sup>34</sup>

The final text to consider appears in the letter of Jude. The cities of Sodom and Gomorrah are included as Old Testament examples of those who sinned and received the due penalty for their sins (Jude 7). Their sins are listed as 'sexual immorality' (*ekporneusasai*) and pursuing 'other flesh' (*sarkos heteras*).<sup>35</sup> The reference is to the tragic episode in Genesis 19, where the men of the cities demanded Lot deliver over his two visitors to them so they might 'know' them sexually.<sup>36</sup>

However, whatever other sins the men of Sodom and Gomorrah sought to commit – such as inhospitality and violence – Jude names sexual immorality. Indeed, the offending conduct is said to be 'in the same manner' as the preceding example of the 'sons of God' in Genesis 6 who had sex with human women, so sexual sin is clearly on view.

But what is the nature of their sexual sin? While part of their sin was the desire to profane angelic beings, the men of the cities were unaware the visitors were angels. Rather, they desired them as 'men', and so it is difficult to exclude the active desire for same-sex intercourse from their sin.

This discussion shows that while the New Testament addresses same-sex sexual activity specifically in only a handful of texts, it does so consistently from the position that, like all sexual activity outside of God-ordained marriage, it is sin, which is to be repented from, avoided and rejected.

30 Anthony C. Thiselton, *The First Epistle to the Corinthians: A Commentary on the Greek Text*, NIGTC (Grand Rapids, MI: Eerdmans, 2000), 448–450. BDAG, s.v. *malakos*, 613.

31 The origin or history of a word (etymology) does not always determine its meaning. However, with compound neologisms, where a new word is formed out of two or more existing words, the meaning of the original component words typically informs the meaning of the new word.

32 This includes Paul's demonstrated familiarity with the LXX.

33 Loader, *Sexuality*, 331–32. Bruce W. Winter, *After Paul Left Corinth: The Influence of Secular Ethics and Social Change*, (Grand Rapids, MI: Eerdmans, 2001), 116–120. BDAG, s.v. *arsenokoitēs*, 135.

34 Gagnon, *Homosexual Practice*, 332–336.

35 Cf. 'unnatural desire' (NIV).

36 Lindsay Wilson, 'Let Sodom be Sodom! Another Look at Genesis 19', in *Sexegesis: An Evangelical Response to Five Uneasy Pieces on Homosexuality*, eds. Michael Bird and Gordon Preece (Sydney South: Anglican Youthworks, 2012), 48–64, here 54–59.



## The lived experience of marriage

However, for all the goodness of marriage in the New Testament, it is not picture-perfect. There are challenges and failures on view that are only too familiar to us.

There are husbands who need to be told to love their wives, to treat them as equal co-heirs of grace, and not to treat them harshly (Eph 5:24; Col 3:19; 1 Pet 3:7). There are wives who need to be told to respect their husbands (Eph 5:33; 1 Pet 3:2). There are believers married to unbelievers, needing reassurance that their marriages and children are holy, and needing encouragement to persevere in the marriage (1 Cor 7:12–16). There is marital breakdown and desertion (1 Cor 7:10–11, 15).

There is also frank acknowledgement that some have fallen or will fall short of God's ideals of celibate singleness or faithful marriage, and need the healing restoration of his love, forgiveness and grace (Luke 7:36–50; John 4:7–42; 1 Cor 6:9–20). Those of us who have failed are given hope.

Neither is the New Testament teaching on marriage captive to its own culture. In a culture where men had the sexual advantage, Paul advocates a radical equality between wife and husband in sexual relations, such that a husband's body belongs to his wife, and a wife's to her husband, and where, as equal moral agents, they are mutually obliged to serve each other, and meet the other's needs, so Satan might not tempt them (1 Cor 7:2–5).<sup>37</sup>

As in all matters of life, believers are to use their bodies in ways that honour the Lord. This includes sexual purity. As broken and fallen people, our unconscious desires and our conscious 'sex lives' are set on rebellion against God's purposes and commands (Rom 1:24–27; 3:9–18; 8:7). Yet all who trust in Christ are to put off the old sinful person and put on the new person, which is being transformed by Christ (Rom 13:12–13; Eph 4:17–24; Col 3:5–10), and we are to help one another do so (Gal 6:1–2, cf. 1 Cor 5:1–13).

Those who are married are to love their spouse (Eph 5:25; Titus 2:4) and be faithful and pure in mind and body (Eph 5:3; 1 Thess 4:3–8), and those who are unmarried are to abstain from all sexual activity or marry rather than burn with passion (1 Cor 7:8–9; 1 Tim 5:11–15). Any sexual activity outside of heterosexual marriage is contrary to God's will and our good (Heb 13:4). This is as true for sexual lust (Matt 5:27–28), as it is for all heterosexual extra-marital sexual activity, and all same-sex sexual activity.

When the New Testament tells believers to 'flee sexual immorality' (1 Cor 6:18), this is what is on view. And it was culturally radical. The first Christians stood out from their surrounding culture because of their sexual purity (1 Pet 4:2–5). It should be no different for Christians today.

## The future of marriage

But we must avoid making human marriage into an idol or cure-all. It is good, but it is not ultimate – not in this life or the next.

The fate of Ananias and Sapphira reminds us that a close marriage is not necessarily a God-honouring one (Acts 5:1–10). The provision of divorce (in certain circumstances) reminds us that this side of the fall, the fracture of divorce is sometimes an appropriate

<sup>37</sup> Winter, *After Paul*, 227–30.



response to human sin and brokenness. Indeed, history and experience tell us that human marriage is not uniformly good.

Moreover, the New Testament speaks very highly of singleness for both women and men – particularly with the freedom and focus it allows to serve Christ wholeheartedly (1 Cor 7:6, 28–38). We must not forget that Jesus lived the perfect human life, and yet he never married, nor had sex. While Peter and other apostles were married, Paul was not.

But Jesus is realistic about the challenges that singleness and sexual abstinence present. He speaks positively of the lives of those who cannot or do not marry, including those who forego marriage for the sake of the kingdom, but at the same time acknowledges this is not an easy path, and not one that everyone can follow (Matt 19:11–12).<sup>38</sup>

Regrettably in our sex- and romance-fixated society and family-focused churches, we can make that even harder. Virginity and chaste singleness are not esteemed, and the experience of being single can be not just that of being unmarried, but of being alone or even unlovable. This is a serious failure of Christian fellowship.

**Faith in Christ recalibrates all our relational bonds, in such a way that our union with him takes precedence over all human ties...**

The truth is that none of us is alone. Faith in Christ recalibrates all our relational bonds, in such a way that our union with him takes precedence over all human ties, even those of marriage and blood (Luke 14:20–26). Christ is the essential locus of our identity, notwithstanding the human relationships that make up our lives.

More than that, our true family is the new spiritual family of brothers and sisters<sup>39</sup> united in Christ by the power of the Spirit (Rom 8:12–17) – a family to which all those who trust in Christ belong equally, irrespective of marital status, race, sex, sexual orientation, age, ability, wealth, status, previous sins, or any other consideration (cf. Gal 3:28; 1 Cor 6:11). As sisters and brothers in Christ we belong to one

another, and are called to love each other, and share our lives, our homes, our time, our material possessions, our griefs and joys with each other for the sake of Christ.

These relationships and family bonds will continue into the next life, but human marriage will not (Matt 22:29–30). Its purposes in this world, and its purpose as a gospel signpost to the eternal marriage of Christ and the church will have been fulfilled.

Until then, marriage between a man and a woman, as he established it from the beginning, will continue as God's gracious gift for the good of all people – believers and unbelievers, individually and communally – and human sexuality will continue as a precious gift from him, to be expressed only within the bonds of marriage as he designed it.

The best way to love our unmarried and same-sex attracted sisters and brothers is not to turn away from or add to God's pattern for marriage so clearly set out in Scripture, nor to doubt the goodness of the boundaries he puts around our sexuality. It is humbly to accept the wisdom and kindness of his will for us, to seek his help to ensure the marriages among us are strong and faithful, and as Christian communities, to live together as brothers and sisters in Christ in such a way that those who are unmarried know deeply that they are loved and belong.

38 'This saying' (19:11) refers to the disciples' statement that 'it is better not to marry' (19:10). D. A. Carson, 'Matthew' in *Expositor's Bible Commentary*, Vol. 8, F. E. Gaebelin (ed.), (Grand Rapids, MI: Zondervan, 1984), 419.

39 Including as spiritual mothers and fathers in the Lord, cf. Rom 16:13; 1 Tim 5:1–2.

# Homosexuality in the Bible

MICHAEL STEAD

**T**he title of this chapter requires an up-front clarification about terminology. This is because the modern understanding of ‘homosexuality’ – in the sense of sexual orientation – is not explicitly addressed in the Scriptures. It is important to distinguish between a person’s sexual disposition, and how they respond to this, whether by activating their desires in their mind (lust) or by putting them into actions in the body (sexual intimacy). To preserve this distinction, this chapter will use the following terminology.

**Same-sex orientation** – a disposition to be sexually attracted to someone of the same sex. A synonymous term is same-sex attraction.

**Same-sex lust** – sexual desire arising from one’s same-sex orientation.

**Same-sex sexual intimacy** – sexual acts that express one’s same-sex desires. I am using the word ‘intimacy’ rather than the word ‘intercourse’ because this encapsulates a broader range of sexual acts.

The Scriptures prohibit both lust (Matt 5:28) and sexual intimacy (Matt 15:19) outside the God-given one-flesh union between husband and wife (cf. Gen 2:24), and this prohibition includes homosexual desire and activity, for both men and women. This means that those who engage in same-sex lust or same-sex sexual intimacy are committing a sin.

That same-sex lust and same-sex sexual intimacy are contrary to God’s purposes for human sexuality has been the near-universal understanding of the Scriptures until very recently. This chapter will begin with a brief summary of the scriptural basis for this understanding, before turning to an examination of the arguments that have recently been raised that seek to overturn this traditional understanding of the Scriptures.

The two key scriptural texts that gave rise to the traditional understanding of same-sex lust and same-sex sexual intimacy are Romans 1 and 1 Corinthians 6.

**Romans 1:21–27** describes the universal condition of all humanity. Because all people have turned their backs on God and worshipped and served created things instead, God has given *all people* over to sin – ‘God gave them up in the lusts of their hearts to impurity, to the dishonouring of their bodies among themselves’ (v 24).

Paul goes on to list some examples of ‘dishonourable passions’ in vv 26–27:

Their women exchanged natural relations for those that are contrary to nature; and the men likewise gave up natural relations with women and were consumed with passion for one another, men committing shameless acts with men and receiving in themselves the due penalty for their error.

This description of dishonourable passions encompasses both same-sex lust (men ‘consumed with passion for one another’) and same-sex sexual intimacy (‘men committing shameless acts with men’). The word ‘likewise’ demonstrates that this description applies both to men and women. ‘Natural’ sexual relationships are those between a man and a woman, and it is ‘contrary to nature’ for both women and men to engage in same-sex sexual activity.

To reiterate a point made at the outset, it is important to distinguish between having same-sex attraction/orientation and committing actual sins – either of body or mind. The biblical prohibitions are directed toward the latter. Having said that, for all of us, our sexual desires – and all our other desires, dispositions, and propensities too – have been corrupted by the fall and ‘deserveth God’s wrath and damnation’ (Article IX). Actual sin occurs when we activate our corrupted desires in our minds or act on those desires with our bodies. It is also important to note that same-sex sexual intimacy is not highlighted in Romans 1 because it is worse than other sins. It is not. Rather, the outworking of having been ‘given over’ by God is seen in the crescendo of sin in vv 29–32 – envy, murder, strife etc. Paul’s argument in Romans 1 is building to his conclusion in Romans 3:23, that all have sinned and fall short of the glory of God.

**1 Corinthians 6:9–10** is in a section of the letter that addresses inappropriate sexual practice in the church at Corinth. In the previous chapter, Paul is scandalised that the church is proud that one of the men in the church is in a sexual relationship with his (step) mother. He commands them to ‘Flee from sexual immorality’ (6:18) and instead ‘Honour God with your bodies’ (6:20).

1 Corinthians 6:9–10 occurs in the midst of this argument:

Do you not know that the unrighteous will not inherit the kingdom of God? Do not be deceived: neither the sexually immoral, nor idolaters, nor adulterers, *nor men who practice homosexuality*, [lit. neither *malakoi* nor *arsenokoitai*] nor thieves, nor the greedy, nor drunkards, nor revilers, nor swindlers will inherit the kingdom of God.

Before we address the italicised phrase, it is important to recognise that these words occur in the context of a list of unrighteous behaviours which disqualify people from the kingdom of God. This list is not limited to sexual sins; it includes idolaters, thieves, the greedy, drunkards, slanderers and swindlers. The list describes habitual and unrepentant patterns of behaviour, rather than a one-off incident. A thief, for example, can become a Christian, but in doing so they must repent and cease being a thief, because that kind of unrighteous behaviour is incompatible with God’s righteousness.

The list of unrighteous behaviours includes ‘sexual immorality’ and ‘adultery’. The Greek word used for sexual immorality in verse 9 is from the *porneia* word group, which encompasses all prohibited sexual acts. The immediate context of this letter gives some other examples: incest (1 Cor 5:1); uniting with a prostitute (1 Cor 6:13–15); extra-marital sex (1 Cor 7:2). ‘Adultery’, which refers to sex by a married person with someone other than their spouse, is a subset of this. Together, Paul’s two terms ‘sexual immorality’ and ‘adultery’ encompass a range of heterosexual sexual sins.

The next two terms in the list to consider are *malakoi* and *arsenokoitai*. Because these terms will be discussed in some detail below, for present purposes we simply note that the traditional understanding is that this pair of words refers to the passive and active partners in

male homosexual intercourse, as a way of encompassing a range of homosexual sexual sins.

The traditional understanding of Romans 1 and 1 Corinthians 6:9–10 leads to the following implications:

- » Paul is not so much condemning the possession of a same-sex orientation, as he is the activation of same-sex desires in the mind or the enactment of those desires with the body.
- » While it might be argued that the prohibition in 1 Corinthians 6:9–10 is limited to male homosexual intercourse (reflecting the prohibition in Leviticus 20:13 against a ‘man lying with a man as with a woman’), Romans 1 encompasses a wider range of same-sex sexual intimacy for both men and women.
- » Obedience to Christ entails fleeing sexual immorality and honouring God with our bodies. For those who are same-sex oriented, this means not acting on those desires in a sexual way, just as the single opposite-sex attracted person must refrain from acting on their desires in a sexual way. There is of course a key difference, in that the single opposite-sex attracted Christian has the possibility of a marriage in which their sexual desires may be appropriately expressed, whereas this possibility is not open to the same-sex attracted Christian who seeks to live in obedience to Christ.
- » Repentance and faith in Christ’s atoning death are necessary to receive the forgiveness of sin. The persistent and unrepentant sinner, who does not admit or seek forgiveness for their sin, puts their eternal salvation in jeopardy.
- » Since God gave marriage as the proper context for the expression of our sexual desires, it is a reasonable presumption that a same-sex marriage involves same-sex sexual activity. Therefore, to bless a same-sex marriage is to bless sin.
- » Those who teach that God blesses and delights in same-sex sexual intimacy in the context of a same-sex marriage are leading others astray, and are not only putting the salvation of the same-sex couple at risk, but are also endangering their own salvation (Matt 18:6–7).

This historic understanding is clearly at odds with our cultural moment. We cannot pretend otherwise. However, what matters is not fitting in with our culture but whether or not this is still God’s word for us today.

## Is the traditional understanding correct?

It has been argued in recent years that the traditional understanding is mistaken, inasmuch as Romans 1 and 1 Corinthians 6 do not apply to consensual and committed same-sex sexual intimacy. For example, Steve Chalke argues that ‘what the New Testament writers have in mind when they refer to homosexual practice could not have been the loving and stable same-sex unions of the sort that exist today, of which they knew nothing’.<sup>1</sup>

1 S. Chalke, ‘A Matter of Integrity: The Church, Sexuality, Inclusion and an Open Conversation’, [static1.squarespace.com/static/5d4979a66a78c600010f87f1/t/5f7d86da49f01a0aa9c72ecc/1602062047349/A+MATTER+OF+INTEGRITY.pdf](https://static1.squarespace.com/static/5d4979a66a78c600010f87f1/t/5f7d86da49f01a0aa9c72ecc/1602062047349/A+MATTER+OF+INTEGRITY.pdf) (accessed 11 February 2022).

In relation to the interpretation of Romans 1, Chalke's argument is based on three interrelated claims:

1. It is not addressed to those who are, by nature, attracted to those of the same sex, but to heterosexual persons who 'reject their natural orientation'. As Fr. Rod Bower put it on ABC Q&A, 'what the Bible is really saying, if anything, is that heterosexual people shouldn't have gay sex'.<sup>2</sup>
2. It is not addressed to consensual same-sex sexual intimacy, but to those who engage in abusive and predatory same-sex sexual intimacy.
3. It is not addressed to committed (i.e., monogamous) same-sex intimate relationships, but only to uncontrolled promiscuity and licentiousness.

These three claims are essential to the argument that Romans 1 does not apply to consensual and monogamous same-sex relationships. However, each of these three claims is contradicted by Romans 1.

## Claim 1 – Romans 1 only means that heterosexual people should not engage in same-sex sexual intimacy

Claim 1 takes the phrase 'contrary to nature' (*para phusin*) in Romans 1:26 to mean 'contrary to their own nature'. This is an unnatural reading, first proposed by John Boswell in 1980,<sup>3</sup> which has been repeatedly shown to be untenable.<sup>4</sup> The argument is untenable because Romans 1:26–27 itself defines what Paul means by 'natural', by contrasting 'natural relations' with those 'against nature'.<sup>5</sup> In verse 27 Paul explains that 'natural relations' for men are relations 'with women', whereas those who forsake natural relations become 'consumed with passion [for men]'. That is, in the internal logic of Romans 1:27, it is 'against nature' for a man to be consumed with desire for a man. 'Against nature' is thus an objective standard, rather than a reference to the subjective desires of the individual.<sup>6</sup> This is also true in

2 Q&A, 28 May 2018, <https://www.abc.net.au/tv/qanda/txt/s4837221.htm>.

3 According to Boswell, 'the persons Paul condemns are manifestly not homosexual: what he derogates are homosexual acts committed by apparently heterosexual persons'. J. Boswell, *Christianity, Social Tolerance, and Homosexuality* (Chicago: University of Chicago, 1980), 109.

4 See, for example, R. B. Hays, 'Relations Natural and Unnatural: A Response to John Boswell's Exegesis of Romans 1' *Journal of Religious Ethics* 14 (1986), 184–215; J. B. De Yong, 'The Meaning of "Nature" in Romans 1 and Its Implications for Biblical Proscriptions of Homosexual Behavior' *JETS* 31 (1988), 429–441; M. Davies, 'New Testament Ethics and Ours: Homosexuality and Sexuality in Romans 1:26–27', *Biblical Interpretation* 3 (1995), 319–20; R. A. J. Gagnon, *The Bible and Homosexual Practice: Texts and Hermeneutics* (Nashville, TN: Abingdon, 2001), 380–92; J. Dallas & N. Heche, *The Complete Christian Guide to Understanding Homosexuality* (Eugene: Harvest House, 2010), 131–33.

5 This verse does not say that they 'abandoned natural desires', but that they 'abandoned natural relations' (*chrêsis*).

6 Paul uses the same phrase in Romans 11:24 to refer to God's 'unnatural' grafting of wild branches onto an olive tree as a metaphor for the inclusion of the Gentiles. Paul writes, 'you were cut out of an olive tree that is wild by nature (*kata phusin*), and contrary to nature (*para phusin*) were grafted into a cultivated olive tree.' Here, 'contrary to nature' means 'contrary to the natural order of things', not 'contrary to the nature of the wild branch'.



the wider Greco-Roman usage of the phrase ‘against nature’.<sup>7</sup>

The description of the behaviour in verses 26–27 is not of heterosexual men dabbling in homosexual sex – these men ‘gave up natural relations with women and were consumed with passion for one another’.

Furthermore, if this interpretation was correct, it has the implication that being ‘consumed with passion’ for men is only ‘unrighteous’ if it doesn’t come naturally. This would have the bizarre implication that all the other sins listed in Romans 1 – envy, covetousness, pride, etc. – would also not be sinful if they came naturally (and we know that they do come naturally!). The rhetorical goal of Paul’s argument in Romans 1–2 is to establish that all people are ‘without excuse’. The interpretation of those like Chalke leads to the opposite conclusion – that some people have an excuse, because their homosexual desires come naturally.

Furthermore, the claim made by Matthew Vines (and others) that ‘the concept of same-sex orientation didn’t exist in the ancient world’<sup>8</sup> is deeply misleading. After an extensive review of ancient Greco-Roman sources, Preston Sprinkle concludes:

... there were many men who preferred to have sex with the same gender and were even believed to have been biologically oriented this way. Some may have been considered masculine by ancient standards; others may have been viewed as feminine. But such men, who preferred sex with men over women (sometimes exclusively) would have been considered (and considered themselves) at the very least bisexual or even gay today.<sup>9</sup>

Similarly, Branson Parler concludes:

Though the NT thought world did not use our modern terminology of sexual orientation, the time frame from Plato to Ptolemy shows that thinkers of antiquity were well aware that sexual inclination was often fixed and not a matter of mere volition.<sup>10</sup>

Thus, those who argue a version of Claim 1 are caught on the horns of a dilemma. On the one hand (or horn), if they assert that Paul had no understanding of homosexual orientation, their argument nonetheless depends on the concept of ‘orientation’ to interpret the

7 For example, in *Laws* (636C), Plato writes: ‘When male unites with female for procreation, the pleasure experienced is held to be due to nature (*kata phusin*), but contrary to nature (*para phusin*) when male mates with male or female with female’, <http://www.perseus.tufts.edu/hopper/text?doc=plat.+laws+1.636c>. In *Against Apion* (2.273), Josephus writes: ‘And why do not the Eleans and Thebans abolish that unnatural (*para phusin*) and impudent lust, which makes them lie with males’, <http://www.perseus.tufts.edu/hopper/text?doc=Perseus%3Atext%3A1999.01.0216%3Abook%3D2%3Asection%3D262>. In *Spec. Laws* (3.39), Philo writes: ‘let the man who is devoted to the love of boys submit to the same punishment, since he pursues that pleasure which is contrary to nature (*para phusin*)’, <http://www.earlychristianwritings.com/yonge/book29.html>. See further R. B. Ward, ‘Why Unnatural? The Tradition behind Romans 1:26-27’, *HTR* 90.3 (1997), 263–84.

8 M. Vines, *God and the Gay Christian: The Biblical Case in Support of Same-Sex Relationships* (New York: Convergent Books, 2015), 102.

9 P. Sprinkle, ‘Romans 1 and Homosexuality: A Critical Review of James Brownson’s Bible, Gender, Sexuality’, *BBR* 24.4 (2014), 515–28, at 525.

10 B. Parler, ‘Worlds Apart?: James Brownson and the Sexual Diversity of the Greco-Roman World’ *TrinJ.* 38NS (2017), 183–200, at 200.



passage – ‘contrary to nature’ in essence means ‘contrary to one’s personal sexual orientation’. But if Paul didn’t know about *homosexual* orientation, then it is not logical to assert that he is only addressing *heterosexuals* acting contrary to their nature in Romans 1. As Richard Hays comments,

to suggest that Paul intends to condemn homosexual acts only when they are committed by persons who are constitutionally heterosexual is to introduce a distinction entirely foreign to Paul’s thought-world and then to insist that the distinction is fundamental to Paul’s position.<sup>11</sup>

But on the other hand (or horn), if they accept that Paul *was* aware of men whose sexual inclination was for other men (and likewise women for women), then what Paul says against same-sex lust and same-sex sexual intimacy in Romans 1 must apply equally to those who are same-sex oriented as to those who are not, because Paul does not make any distinction on the basis of orientation.

## Claim 2 – Romans 1 only addresses abusive/predatory same-sex sexual intimacy<sup>12</sup>

There is nothing in the language of Romans 1 that would suggest that it is limited to abusive or predatory same-sex sexual intimacy. Romans 1:26–27 explicitly refers to man-to-man,<sup>13</sup> not man-to-boy sexual intimacy – it refers to men who are ‘consumed with passion’ *for one another*, and ‘men committing shameless acts with men’. This passage does not use any of the well-established Greek vocabulary for pederastic relationships.<sup>14</sup> Likewise, there are no words that suggest prostitution, and the fact that both parties to the sex act are equally culpable undercuts the argument of Claim 2 that this is only addressed to slaves used for sexual purposes, since a slave who had no choice in the matter should not be culpable.

Some versions of Claim 2 recognise that there is nothing in the language of Romans 1 that limits its application to abusive or predatory same-sex sexual intimacy, but instead argue that the **only** forms of same-sex sexual intimacy of which Paul was aware were those which involved ‘domination, control, lack of consent, and lack of mutuality’<sup>15</sup> (such as pederasty, slavery or prostitution) – or, to say the same thing another way, that Paul knew nothing of ‘the loving and stable same-sex unions of the sort that exist today’ (Chalke).

Claim 2 puts those advocating for same-sex marriage in an impossible bind. On the one hand, they argue that same-sex orientation is a ‘natural’ and immutable variation of human biology. This presumably means that the proportion of same-sex attracted men and women relative to the general population would be more or less the same in antiquity as it is today.

<sup>11</sup> Hays, ‘Relations Natural and Unnatural’, 200–201.

<sup>12</sup> This argument is developed in full in J. Brownson, *Bible, Gender, Sexuality: Reframing the Church’s Debate on Same-Sex Relationships* (Grand Rapids: Eerdmans, 2013) and Robin Scroggs, *The New Testament and Homosexuality* (Philadelphia: Fortress, 1983).

<sup>13</sup> Or, to be precise, ‘men-in-men’ (*arsenes en arsesin*).

<sup>14</sup> In the Greco-Roman world, pederasty (*paiderastēs*) involved a romantic and sexual relationship between an adult male (*erastēs*) and a (teenage) boy (*eromenos*).

<sup>15</sup> Brownson, *Bible, Gender, Sexuality*, 247.

On the other hand, they are also arguing that the modern same-sex relationship was unknown in antiquity, and the only relationships were pederastic or otherwise abusive.

However, the evidence of antiquity attests to the existence of consensual and loving same-sex unions. While this may support their argument that same-sex orientation is a ‘natural’ variation of human biology, it fatally undercuts the argument that Paul could not have known about loving and stable same-sex unions.

Having provided a string of examples of ‘mutual, consensual same-sex relationships from Greece and Rome’, Branson Parler concludes:

Even in the Greek culture that often exalted pederasty, there are numerous examples of consenting adults engaging in same-sex relationships, up to and including life-long commitments. In the Roman culture, which at first was more resistant to Greece but was gradually Hellenized, there are also numerous examples of consenting adults engaging in same-sex relationships, up to and including life-long commitments.<sup>16</sup>

Sprinkle conducts a similar analysis, and concludes: ‘There was a broad spectrum of same-sex relations available to Paul. We cannot assume that Paul only had non-consensual and unhealthy homosexual relations in view and therefore condemned (only) these types of relations. Paul most probably was aware of at least some consensual, even marital, unions among both men and women to the same gender’.<sup>17</sup>

This evidence means that Chalke’s argument – that ‘what the New Testament writers have in mind when they refer to homosexual practice *could not have been* the loving and stable same-sex unions of the sort that exist today, of which they knew nothing’ (emphasis added) – is unsustainable.

### Claim 3 – Romans 1 only addresses uncontrolled promiscuity and licentiousness

This claim is similar to Claim 2, and vulnerable to the same refutation – that the evidence of antiquity demonstrates that some same-sex relationships were loving and consensual. There is nothing in the language of Romans 1 to suggest that it only refers to uncontrolled promiscuity and licentious same-sex sexual intimacy; rather, it refers to men who are ‘consumed with passion’, using similar imagery to that which Paul applies to heterosexual relationships (‘it is better to marry than to burn with passion’ – 1 Cor 7:9).<sup>18</sup>

In summary, then, these three claims, which are essential to the argument that Paul couldn’t possibly be referring to consensual and committed same-sex relationships in Romans 1, cannot be sustained.

16 Parler, ‘Worlds Apart?’, 198.

17 Sprinkle, ‘Romans 1’, 527.

18 Cf. the conclusion of W. Loader, ‘Reading Romans 1 on Homosexuality in the Light of Biblical/Jewish and Greco-Roman Perspectives of its Time,’ *Zeitschrift für die Neutestamentliche Wissenschaft* 108 (2017), 134 – ‘What for Paul makes these strong passions a manifestation of sin is not so much their intensity or excess but their misdirection.’

## 1 Corinthians 6:9

Those who dispute the traditional understanding of 1 Corinthians 6:9 (that it refers to the active and passive partners in homosexual sex) argue that the key words *malakoi* and *arsenokoitai* refer only to pederastic or exploitative relationships, and cannot apply to loving, consensual homosexual sex. This is special pleading. There is nothing in the context to suggest that these words should be given a restricted meaning.

If Paul had intended to refer to a limited set of homosexual acts, ancient Greek had a well-established vocabulary for this (see footnote 14). Instead, it seems that Paul coined a new word – *arsenokoitēs*, which is a compound word made from the components *arsenos* (male) and *koitos/koitē* (literally ‘bed’, but often with sexual connotations). If the meaning of this new word derives from its two components, then an *arsenokoitēs* is a ‘male-bedder’ (i.e., a man who sleeps with a man). In response to the claim that it is illegitimate to derive the meaning of the word in this way, labelling this as an etymological fallacy, it should be noted that, while the components and origins of a word do not necessarily determine its meaning for all time, in this particular case there are two reasons why the components are very relevant to the meaning in 1 Corinthians 6.

Firstly, this is a ‘neologism’ (a new word). Paul’s usage of the word *arsenokoitēs* in 1 Corinthians 6 is the first recorded instance in extant Greek literature. Neologisms do not have a wide semantic range, because there is (at that initial point) no other uses to broaden the range of possible meanings. When an author coins a new word, it has a single meaning. To the extent that an author wants readers to understand a neologism, he or she relies on etymology (the meaning derived from the component words) and literary context to guide readers to the meaning of this new word. The constituent elements of other New Testament neologisms provide a reliable guide to the meaning of the new word. The etymology of a neologism, therefore, cannot be dismissed as irrelevant to meaning.

Secondly, this particular neologism (*arsenokoitēs*) joins together two words used in close proximity in the Old Testament (OT) in Leviticus 18:22 and 20:13.

- Lev 18:22     You shall not lie with a male as with a woman  
                   (LXX: *meta arsenos ou koimēthēsē koitēn gynaikos*)
- Lev 20:13     if a man lies with a man as with a woman  
                   (LXX: *meta arsenos koitēn gynaikos*)

Given the patterns of Paul’s other neologisms elsewhere in the NT, it is beyond doubt that the Old Testament context of Leviticus 18:22 and/or 20:13 provides the background source for *arsenokoitēs* in 1 Corinthians 6:9. There are no other clues from the context of 1 Corinthians 6 that suggest a meaning other than that provided by the etymology and Old Testament context of the word *arsenokoitēs*, and the pairing with *malakos* (which in the context of this vice list probably refers to the passive partner in homosexual sex) supports the meaning derived from etymology and the OT – an *arsenokoitēs* is a man who has sex with a man. Those who do this, along with fornicators and adulterers, are ‘wrongdoers’.

Arguments that seek to cast doubt on the meaning of *malakos* are also unpersuasive. For example, in her essay ‘Marriage, Headship and the New Testament’ Dorothy Lee claims that

*malakos* (literally ‘soft’) is ‘difficult to translate.’<sup>19</sup> She argues:

The ‘soft’ may refer to people who live in luxury (cf. Matt 11:8/Luke 7:25), are in some way effeminate or are morally lax, including sexually. It may refer to the passive partners in anal intercourse (page 132).

What is not acknowledged by Lee is that, when *malakos* occurs in the context of homosexual activity, there is no uncertainty regarding meaning: it never means living in luxury, or being effeminate in a general way; it means a man ‘playing the woman’ in sex.

These and other attempts to reinterpret Romans 1 and to cast doubt on the meaning of key words in 1 Corinthians 6 are recognised as ‘extraordinary manoeuvres’ even by those who support same-sex marriage. For example, Professor William Loader (a world-recognised expert on homosexuality in the New Testament and the ancient world) is convinced that Paul condemns homosexual practice. Notwithstanding this, he believes that the modern church should now embrace homosexual practice, because Paul simply got it wrong at this point. His understanding of scriptural authority allows him to do this, but he acknowledges the difficult situation of those who wish to affirm the appropriateness of same-sex sexual intimacy and at the same time hold to an understanding of scriptural authority that means Paul and the other human authors of Scripture do not get it wrong. He comments:

For those of us whose understanding of scriptural authority does not entail such belief we can only stand and wonder at the extraordinary manoeuvres which have been undertaken to re-read Paul as not condemning homosexual relations at all.<sup>20</sup>

## Conclusion

It has not been my purpose in this chapter to address the important pastoral question of how best to care for Christians who experience same-sex attraction and to support them as they seek to live in obedience to Scripture. But what the analysis above has demonstrated is that there is no basis for overturning the long-held understanding that same-sex lust and same-sex sexual intimacy is contrary to God’s purposes for human sexuality.

Therefore, we should withstand the pressure from the culture around us to conform the Bible’s teaching to the ways of this world, and be careful lest we seek to hear only what our itching ears want to hear (1 Tim 4:3). In response to those within the church who, in the name of tolerance and inclusion, are calling upon us to condone behaviour that Scripture condemns, we must remember what the risen Lord Jesus said to the church in Thyatira when they did this:

But I have this against you, that you tolerate that woman Jezebel, who calls herself a prophetess and is teaching and seducing my servants to practice sexual immorality (Rev 2:20).

19 D. Lee, ‘Marriage, Headship and the New Testament’, in *Marriage, Same-Sex Marriage and the Anglican Church of Australia: Essays from the Doctrine Commission* (Mulgrave, VIC: Broughton Publishing, 2020), 123–138.

20 Loader, ‘Reading Romans 1’, 119–149, at 120.



# LEGAL CONSIDERATIONS





# Doctrine and the Constitution of the Anglican Church of Australia

MICHAEL STEAD

**Central to the Majority Opinion of the Appellate Tribunal in the Wangaratta and Newcastle references is a minimalist definition of ‘doctrine’ for the purposes of the Constitution of the Anglican Church of Australia.**

**T**he purpose of this chapter is to contrast this minimalist definition of doctrine with the very different approach taken in a report of the Sydney Diocesan Doctrine Commission entitled ‘Faith and Doctrine in the Constitution of the Anglican Church of Australia’.

This report was tabled in August 2020, which was several months before the Opinions of the Appellate Tribunal were delivered. The Constitution establishes the Appellate Tribunal as the final arbiter of the meaning of the Constitution and Canons of our Church. This means that its minimalist definition of doctrine is now the legal definition of doctrine as that word is to be understood in the Constitution and Canons of the Anglican Church of Australia, regardless of the view expressed in the report of the Sydney Diocesan Doctrine Commission. However, Article XXI reminds us that Councils of the Church ‘may err, and sometimes have erred, even in things pertaining unto God’ and that ‘things ordained by them as necessary to salvation have neither strength nor authority, unless it may be declared that they be taken out of holy Scripture.’ The Appellate Tribunal is not a Council of the Church, but it too may err, and (it will be demonstrated below) has erred in adopting a minimalist definition of doctrine.

## The definition of doctrine in the Majority Opinion

The Majority Opinion of the Appellate Tribunal is a radical redefinition and restriction of the constitutional scope of the ‘doctrine’ of the Anglican Church of Australia.

The Majority Opinion affirms and adopts the definition of ‘doctrine’ set out by Archbishop Rayner in 1987 (cited in para 148), that

*‘Doctrine’ must therefore be understood in the Constitution as the Church’s teaching on the faith **which is necessary to salvation**.* (emphasis added)

The Majority Opinion claims that this is ‘the settled meaning of “doctrine” in the Constitution’ (para 166). However, this is simply not the case. Rayner’s restriction of doctrine to that which is necessary to salvation was a minority view in the 1987 opinions, and inconsistent with the view taken by the majority of the other Opinions.

In both 1985 and 1987, the majority of opinions express the view that there are ‘principles of doctrine’ that arise from the Ruling Principles under s 4, which are to be distinguished from doctrine arising from the Fundamental Declarations in ss 1-3. The former can be changed (albeit subject to the high bar established by s 67) whereas the latter are unchangeable. For example, in their joint opinion in 1985, Cox and Handley wrote:

The principles of the Church of England referred to in Section 4, **whether doctrinal or otherwise**, are not unalterable – they may be changed by canon or, if need be, by amending Section 4 itself – and must therefore be taken to be principles of a different, lesser kind, not fundamental in the same sense as the principles contained in Chapter I. (1985: p 12 of their opinion). (emphasis added)

Similarly, in 1987 Justice Cox wrote:

If the proposal is inconsistent with the Fundamental Declarations, [the General Synod] will not be able to do anything at all... If the proposal is consistent with the Fundamental Declarations but inconsistent with the Ruling Principles, the General Synod is not powerless to act. What it may do in any given case will depend upon the kind of principle involved. If it is a **principle of doctrine or worship** the General Synod may not abrogate it merely by passing a canon on the subject, for any such canon will be invalid for inconsistency with Chapter II. See ss.4, 5 and 26. The only course open in such a case is to amend the Constitution – say, by modifying directly the terms of s.4, or by writing into the Constitution an express power to do the proposed act which will achieve the same modification in an indirect way. Any such constitutional amendment would have to conform with the requirements of s.67. (emphasis added)

Similar views are expressed about the alterability of a ‘principle of doctrine’ arising under s 4 by Holland (1987, p 76), Tadgell (1987, pp 83–89), and Young (1987, p 106).

However, if a principle of doctrine is (on the Rayner definition) *limited* to those things ‘necessary to salvation’, then we arrive at the absurd result that the Constitution has expressly provided a mechanism for the Church to alter something that is ‘necessary to salvation’. Of course, this is not the case. The practical effect of the Rayner definition of ‘doctrine’ is to reduce the ‘principles of doctrine’ arising under s 4 to an empty set. This is because the Ruling Principles articulate those principles of doctrine and worship which are distinctively

Anglican, and there is nothing that is distinct to Anglican belief or practice that is ‘necessary to salvation’.

The restriction of doctrine to that which is ‘necessary to salvation’ is a key element in the reasoning of the Majority Opinion. For example, the argument that the Wangaratta service was invalid because it was inconsistent with a ‘principle of doctrine’ arising from the *Book of Common Prayer* that marriage is necessarily between a man and a woman is rejected on the basis that

none of the BCP teachings about marriage are ‘teaching(s) on the faith which is **necessary to salvation**’, to use the formulation of Archbishop Rayner and Justice Cox (para 180; the partial attribution of this formula to Justice Cox is in error). (emphasis added)

Similarly, the argument that the Wangaratta service was invalid because it was inconsistent with the Scriptures was rejected, because a liturgy to bless a same-sex marriage does not contradict a ‘teaching on the faith which is necessary to salvation’.

The references to ‘faith’ and ‘things necessary for salvation’ focus attention on what is and what (by implication) is not declared to be ‘fundamental’ as to the authority of the Holy Scriptures so far as concerns the Constitution. (para 195)

In paras 205–214, the Majority Opinion considers the argument that 1 Corinthians 6:9–10 makes homosexual practice a matter of salvation, and concludes:

The *Corinthians* passage, in our opinion, does not advance the case for establishing a scriptural teaching in the nature of a ‘doctrine’ in the constitutional sense. There is in *Corinthians* a ‘teaching on the faith which is necessary to salvation’. But it is the teaching about the necessity for Christ’s saving grace. (para 214; emphasis original)

The minimalist definition of ‘doctrine’ in the Majority Opinion opens the door to an expansive operation of the discretion conferred by the *Canon Concerning Services 1992*. Section 5(3) of that Canon requires that variations on an existing service or a new service created for occasions for which no provision is made ‘must not be contrary to or a departure from the **doctrine** of this Church’. The Majority Opinion’s narrow definition of doctrine (‘teachings of the faith that are necessary to salvation’) means that a minister has a very wide discretion to create or modify liturgies, provided only that these changes do not touch on a matter which is necessary to salvation. This would permit a service that is in direct contradiction to the (non-salvific) teachings of Christ or this Church. For example, a service affirming ‘purgatory, pardons, worshipping and adoration of ... reliques’ would be permissible, notwithstanding the fact that Article XXII declares these things to be ‘repugnant to the Word of God’.

The Majority Opinion has taken the view that the requirement in Section 4 of the Constitution, that ‘no alteration or permitted variations from the services or Articles [contained in the formularies] shall contravene any principle of doctrine or worship laid down in such standard’ was not relevant in the case of the Wangaratta Regulation, because the Wangaratta Regulation has created a new rite, and thus did not ‘purport to alter or vary any authorised rite in the BCP’ (para 54, cf. para 46). This reading down of the scope of this proviso in s 4 creates a direct tension between the *Canon Concerning Services 1992* and the

two Canons passed by the General Synod to authorise *An Australian Prayer Book* (AAPB) and *A Prayer Book for Australia* (APBA). There is nothing in either Canon that permits a liturgy that deviates from the principles of doctrine or worship in the formularies. For example, sub-cl 6(3) of the *Prayer Book for Australia Canon 1995*, in relation to a Bishop's power to authorise deviations from APBA, says:

Nothing in this section permits a deviation contravening a principle of doctrine or worship referred to in section 4 of the Constitution.

Thus, according to the 1995 Canon, the Bishop of a Diocese is *not* permitted to authorise a deviation from any principle of doctrine or worship in the formularies. The – frankly bizarre – outcome of the Majority Opinion is that the 1992 Canon authorises each minister in a diocese to do what their diocesan bishop is not authorised to do by the 1995 Canon – that is, to vary an existing service or create a new service that contravenes a principle of doctrine or worship in the formularies. This cannot have been the intent of the General Synod in 1992, which calls into question both the definition of 'doctrine' and the restrictive interpretation of the second proviso to s 4 of the Constitution adopted by the Majority Opinion.

The Majority Opinion is a radical restriction of the scope of 'doctrine' in the Constitution, which can only lead to a profound redefinition of the shared understanding of what defines us (and binds us together) as an 'Anglican' Church. Our shared understanding – that 'doctrine' is much wider than matters which are necessary to salvation – was the unanimous view of the House of Bishops and the Board of Assessors in their reports to the Appellate Tribunal. This is also the view expressed in the following report from the Sydney Diocesan Doctrine Commission.

# Faith and Doctrine in the Constitution of the Anglican Church of Australia

## *A Report of the Sydney Diocesan Doctrine Commission*

On 9 July, 2020, Archbishop Glenn Davies sent the following request to the chairman and secretary of the Sydney Diocesan Doctrine Commission: ‘It occurred to me that, given the Wangaratta submission to the Appellate Tribunal has tried to make a distinction between faith and doctrine, in terms of the Constitution, there would be value in the Doctrine Commission’s reflection upon the merits of such a distinction.’ The following report is the result of that reflection.

### Introduction

1. Part I of The Constitution of the Anglican Church of Australia (1961) begins with three Fundamental Declarations (Chapter I) and three Ruling Principles (Chapter II). The function of the Fundamental Declarations is to protect the essential elements of the Christian Faith, declaring such elements to be foundational to Australian Anglicanism. The Ruling Principles further declare that the Anglican Church of Australia (ACA) retains and approves the historical standards of doctrine and worship of the Church of England as the norm for all future development. This short report explores what is meant in the Constitution by ‘faith’ and ‘doctrine’.

### Faith

2. Although ‘faith’ is most commonly used in the Scriptures to refer to personal trust or belief, it is occasionally used with reference to that which is believed (i.e., the *content* of faith). For example, Paul narrates the report that ‘The man who formerly persecuted us is now preaching *the faith* he once tried to destroy’ (Gal 1:23). Luke recalls that as the word of God spread in Jerusalem ‘a large number of priests became obedient to *the faith*’ (Acts 6:7; see also Acts 13:8; 14:22; 16:5). Paul tells Timothy that deacons must keep hold of ‘the deep truths of *the faith* with a clear conscience’ (1 Tim 3:9). Jude urges his readers to ‘contend for *the faith* that was once for all entrusted to God’s holy people’ (Jude 1:3). In each of these cases ‘the faith’ equates to essential Christian proclamation and teaching.
3. Section 1 of the Fundamental Declarations uses ‘the Christian Faith’ in a way that is resonant with this scriptural use. Its meaning cannot be reduced to the barest essentials of Christian teaching, nor is it exhausted by the Creeds. For if the Christian faith is that which is ‘in particular’ set forth in the Creeds, it cannot be reducible to the Creeds. This is further clarified in Section 2, where what is taught concerning the nature of the Scriptures is not explicit in the Creeds but is



nevertheless affirmed as a tenet of the Christian Faith. Therefore, this Faith is declared to be that which has been 'professed by the Church of Christ from primitive times' (Section 1).

4. Section 2 of the Fundamental Declarations recognises that the rule and standard of this faith is the canonical Scriptures. This Section clearly alludes to and affirms Article VI of the *Thirty-Nine Articles*: 'Holy Scripture contains all things necessary to salvation: so that whatsoever is not read therein, nor may be proved thereby, is not to be required of any man, that it should be believed as an article of the Faith, or be thought requisite or necessary to salvation'.
5. Read in the light of Article VI, 'the faith' in the Constitution of the ACA means the things that are provable by Scripture and, therefore, such things as ought to be required to be believed as articles of the faith. This, as we have seen, is broader in scope than either the Creeds or merely the doctrine of salvation narrowly considered. The Article aims to establish the sufficiency of Scripture for the whole of the Faith.
6. Section 74 (1) of the Constitution further affirms that 'faith includes the obligation to hold the faith'. In this way, both corporate and personal faith are brought alongside the faith so defined. The corporate and personal faith of the members of the ACA must be in the Christian faith as defined in the canonical Scriptures.

### Doctrine

7. Faith, doctrine and obedience are closely linked in the Scriptures. In 1 Timothy 1:10-11, 'sound doctrine' is that which conforms to the gospel. Obedience also flows from and is consistent with sound doctrine. So, among other things, sexual immorality, practising homosexuality, slave trading and lying are described as 'contrary to the sound doctrine that conforms to the gospel'. Later in 1 Timothy, Paul warns against anyone who 'teaches a different doctrine and does not agree with the sound words of our Lord Jesus Christ and the teaching that accords with godliness' (1 Tim 6:3). In Romans 6:17, the 'pattern of doctrine' believers have received defines the moral choices they are to make as they live new lives set free from sin. Obedience is inseparable from the 'sound doctrine' that is 'in accordance with the gospel of the glory of the blessed God' (1 Tim 1:11).
8. In Section 3 of the Fundamental Declarations, the Constitution commits the ACA to 'ever obey the commands of Christ', to 'teach His Doctrine', and to order the life of the Church accordingly, following and upholding 'His discipline'. This reference to Christ's doctrine is synonymous with 'the Christian Faith', as defined above.
9. In summary, 'the Christian Faith', the Scriptures as 'the ultimate rule and standard of faith' and 'His [Christ's] doctrine' are three different ways of referring to the same reality. As these expressions are all embedded in the Fundamental Declarations, the reality to which they refer is constitutionally unchangeable.

10. In the Ruling Principles, Section 4 locates the source of the doctrine of this Church in the *Book of Common Prayer* and the *Thirty-Nine Articles*. Section 74 (2) further clarifies that this means the 1662 *Book of Common Prayer* (inclusive of The Ordinal).
11. This doctrine is particularly and historically Anglican, although it must always be consistent with 'the Christian Faith', the canonical Scriptures and Christ's doctrine. The doctrine of the *Book of Common Prayer* and the Articles provide the Anglican Church of Australia with its long held and commonly agreed answers to questions raised by the Faith. Section 74 (1) defines doctrine as 'the teaching of this Church on any question of faith'. Furthermore, in Section 74 (4), it is clarified that 'unless the context or subject matter otherwise indicates, any reference to faith shall extend to doctrine'. Therefore, it is not possible to play off 'faith' and 'doctrine' against each other in either the Scriptures or the Constitution of the ACA.
12. The doctrine of this Church, as expressed in the *Book of Common Prayer* and the Articles, is a Ruling Principle rather than a Fundamental Declaration. As such, it is in theory revisable, so long as such revisions are 'consistent with the Fundamental Declarations' and do not 'contravene any principle of doctrine or worship' in the *Book of Common Prayer* and the Articles (Section 4). Any revision must be proved from the canonical Scriptures and so accord with the doctrine of Christ.

### Conclusion

13. The Constitution commits the ACA to the Christian Faith of the Catholic Church, which is the doctrine of Christ as expressed in the canonical Scriptures. The doctrine of the ACA is grounded in an affirmation of the doctrinal statements embodied in the *Book of Common Prayer* and the Articles, which make explicit the relationship between faith, doctrine and obedience for Australian Anglicans.

Mark D. Thompson  
 Chair  
 3 August, 2020



# The Majority Opinion

## *A commentary*

NEIL FOSTER<sup>1</sup>

### Introduction

**T**he Appellate Tribunal of the Anglican Church of Australia has released two Opinions relating to proposed change in church laws by two Australian dioceses (Wangaratta and Newcastle). The effect of the Majority Opinion<sup>2</sup> is that it is lawful for a diocese to approve a church service to pronounce a formal blessing on a same-sex couple married under Australian civil law. The long-term impact of this Opinion may be serious for the unity of the Anglican Church of Australia (ACA), as it touches on issues which are dividing the Anglican Communion around the world.

My overall focus is on the use of the word ‘doctrine’ and how the reasons of the majority in the Opinion might be used in future by the secular courts in Australia and by others in the ACA.

The *Majority Opinion* concerns the possible use of a ‘blessing’ service for a same-sex couple who have been married under Australian civil law. It is clear from the background to the introduction of the service that it is explicitly designed to be used to ‘bless’ marriages entered into between same-sex couples. I will leave it to others to comment on the theological and ecclesiastical implications of the word ‘bless’, but I take it that in general, when used of an act by a person, it is a word used to express approval for, and support of, a particular thing. To ‘bless’ a relationship between two persons is not just to express support for the individuals concerned, but also to express approval of, and support for, their entering into that particular relationship.

Australian law was amended in 2017 to allow same-sex couples to enter into marriages under the *Marriage Act 1961* (Cth).<sup>3</sup> The amended Act, however, assumes that some religious organisations will not want to offer same-sex marriage – see ss 47 and 47A which

1 Associate Professor of Law, Newcastle Law School, NSW. Views expressed here are, of course, my own and not necessarily those of my institution.

2 *Primate’s References re Wangaratta Blessing Service* (11 November 2020) Appellate Tribunal of the Anglican Church of Australia; at <https://anglican.org.au/wp-content/uploads/2020/11/AT-Wangaratta-11112020-Final.pdf>. There was a 5-1 split in the Opinions. The dissenting reasons are referred to here, but most of the comments relate to the joint reasons of the majority.

3 See my comment on the event in ‘Australia adopts same sex marriage: law and religion implications’ (Dec 7, 2017) <https://lawandreligionaustralia.blog/2017/12/07/australia-adopts-same-sex-marriage-law-and-religion-implications/>.

allow ministers of religion and religious marriage celebrants to decline to perform such ceremonies. The reason for this is that a number of religious traditions regard homosexual activity as contrary to God's will. In the Christian tradition, this view is supported by the clear teaching of the Bible, evidenced in the New Testament by passages such as Romans 1 and 1 Corinthians 6.

The Anglican Church of Australia, in a resolution of its General Synod in 2017, has affirmed that:

the **doctrine** of our church, in line with traditional Christian teaching, is that marriage is an exclusive and lifelong union of a man and a woman (emphasis added).<sup>4</sup>

(Note, as it will be important in the following context, that General Synod explicitly uses the word 'doctrine' to refer to this proposition.)

## Diocese of Wangaratta

The ACA does not offer marriage to same-sex couples. But some within the denomination have proposed that the church offer a service of 'blessing' for such couples who are married in accordance with the current provisions of the *Marriage Act 1961*.

One such proposal was put forward by the Diocese of Wangaratta. A new liturgy was proposed – it is set out in full as an Appendix to the majority reasons in the Opinion (from pp 65–67.)<sup>5</sup> It provides for a 'blessing' to be pronounced on two persons civilly married 'as they continue their married life together'. (Note that already at that point, the liturgy is identifying the same-sex couple as 'married' for the purposes of the Anglican Church.) It then gives thanks for their love, and in particular for 'the physical and emotional expression of that love.' In the context it is difficult to see this as anything but an expression of approval for homosexual physical intimacy.

The Opinion does note at some points that not all same-sex relationships involve sexual activity.<sup>6</sup> But given the long historical and biblical understanding of the institution as a place appropriate for sexual activity between the couple, and in particular the highly sexualised nature of modern Western society, examples of such a celibate relationship are likely to be rare. In particular, it is interesting to note that when the Opinion tries to craft a definition of 'marriage' which will allow same-sex couples, at para 18, the majority include among the minimal requirements 'human actors of the age of sexual maturity'. The potential for sexual intimacy between the married persons is presumably why the *Marriage Act 1961* contains a

4 See 'MARRIAGE, SAME-SEX MARRIAGE AND THE BLESSING OF SAME-SEX RELATIONSHIPS', adopted 7 Sept, 2017, at <https://anglican.org.au/the-general-synod/search-resolutions-of-gs-sessions/?sid=2827>.

5 A service of blessing using the liturgy, for a same-sex legally married couple, was apparently held 10 days after the Tribunal opinion was handed down: <https://tma.melbourneanglican.org.au/2020/12/first-same-sex-marriage-blessing-conducted-after-tribunal-decision/>: 'Bishop John Parkes, the retired Bishop of Wangaratta, blessed the marriage of retired clergy the Revd Dr John Davis and the Revd Rob Whalley using the liturgy approved by Wangaratta Synod in August 2019.' (accessed 24 February 2022)

6 See, for example, para 27, noting 'the very real possibility that some marriages will not involve sexual intimacy that infringes the Biblical proscription(s) relied upon'.

prohibition on under-age marriage and a list of ‘prohibited relationships’.<sup>7</sup>

This new liturgy purported to be made under authority of a General Canon of the General Synod of the ACA passed in 1992. The 1992 Canon in cl 5(2) allows a minister of a local church to use novel forms of service not set out in authorised prayer books: ‘a minister of that diocese may on occasions for which no provision is made use forms of service considered suitable by the minister for those occasions’.

However, a limitation on this power is contained in cl 5(3):

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

A challenge to the use of the Wangaratta blessing service was made, in broad terms, on the basis that the service itself was indeed contrary to ‘the doctrine of this Church’. The challenge was by way of a reference by the Primate of the ACA to the Appellate Tribunal (the Tribunal).

The Tribunal is empowered by the Constitution of the ACA, s 63(1), to give its opinion on a ‘question arising’ under the Constitution. The validity of the order of service depends on its compliance with cl 5(3) of the 1992 Canon, which by its reference to ‘the doctrine of this Church’ raises a question under the Constitution.

## Constitutional provision for assistance on doctrine questions

Under s 58(1) of the Constitution:

Before ... giving an opinion on any reference the Appellate Tribunal shall in any matter involving doctrine upon which the members are not unanimous upon the point of doctrine and may, if it thinks fit, in any other matter, obtain the opinion of the House of Bishops, and a board of assessors consisting of priests appointed by or under canon of General Synod.

In this case the Tribunal did refer four specific questions to be answered by a Board of Assessors, and by way of advice from the House of Bishops (see para 279). The questions were very narrowly worded. But even so, it is apparent that both these bodies gave opinions *against* the endorsement of same-sex relationships by a formal service of blessing. See the comments of Member Davidson in dissent:

[87] The unanimous views of both the House of Bishops and Board of Assessors is that Scripture teaches that homosexual practice is sinful, that persistent, unrepentant, sin threatens salvation and that such behaviour should not be blessed by the Church.

Yet the majority concludes otherwise. They do so because of the narrow view they take of the word ‘doctrine’ (and also the word ‘faith’).

7 See *Marriage Act 1961* (Cth) paras 23B(1)(b) and (e).



## The central question

The main question which required resolution here, then, was whether a form of service which blessed a same-sex relationship would be ‘a departure from the doctrine of this Church’.

The 1992 Canon was made by the General Synod; the majority noted at para 54, pursuant to s 4 of the Constitution which gives authority to the Synod:

to alter or revise ... forms [of worship]..., provided that all such ... forms ... are consistent with the Fundamental Declarations contained herein and are made as prescribed by this Constitution.

The specific clause in the 1992 Canon making a service invalid if it departed from ‘the doctrine of this Church’ was treated as a general reference to the Fundamental Declarations outlined in Sections 1–3 of the Constitution. In theory a service might not be a departure from ‘the doctrine’ of the Church but still be in some way not ‘consistent’ with the Fundamental Declarations. If that were the case, however, then the 1992 Canon would be invalid to the extent that it authorised such a service. So, the broader question was: Was the service consistent with the Fundamental Declarations?

The Fundamental Declarations in the Constitution are ss 1–3:

1. The Anglican Church of Australia, being a part of the One Holy Catholic and Apostolic Church of Christ, holds the Christian Faith as professed by the Church of Christ from primitive times and in particular as set forth in the creeds known as the Nicene Creed and the Apostles’ Creed.
2. This Church receives all the canonical scriptures of the Old and New Testaments as being the ultimate rule and standard of faith given by inspiration of God and containing all things necessary for salvation.
3. This Church will ever obey the commands of Christ, teach His doctrine, administer His sacraments of Holy Baptism and Holy Communion, follow and uphold His discipline and preserve the three orders of bishops, priests and deacons in the sacred ministry.

For the purposes of the question involved here, the key relevant phrases seem to be:

- » ‘the Christian Faith as professed by the Church of Christ from primitive times’;
- » The Scriptures as ‘the ultimate rule and standard of faith given by inspiration of God and containing all things necessary for salvation’;
- » ‘obey the commands of Christ, teach His **doctrine**’. (emphasis added)

Other contributions to this volume will address other issues, but in this chapter, I want to focus on the meaning of the word ‘doctrine’ in s 3 (which, of course, must inform the phrase ‘the doctrine of this Church’ in cl 5(3) of the 1992 Canon).

## How did the Majority Opinion approach the central question?

The task of the Tribunal in any reference of this sort is, of course, a challenging one. On the one hand, it must address the specific question which it is empowered to answer, whether a proposal is ‘inconsistent’ with the Fundamental Declarations, or a ‘departure’ from the doctrine of the Church. Such consideration will mean that it will need to offer a view on the content of doctrines of the Church, so as to determine the question of inconsistency. On the other hand, the formal defining of doctrines at large is not the Tribunal’s remit. Its task is the narrower one of judging the consistency question.

In approaching that task, the Tribunal will naturally use interpretative techniques that are drawn from the mainstream legal system. One factor here will be that the legal members of the Tribunal are drawn from that system, and have usually included one or more current or retired senior judges. The current President of the Tribunal is the Hon Keith Mason AC QC, a highly respected former President of the NSW Court of Appeal. It seems likely that it was President Mason who wrote the Majority Opinion. Another factor encouraging the use of standard judicial techniques for interpreting legislation is that section of the Constitution, s 74(7), which explicitly applies the *Acts Interpretation Act 1901-1948* of the Commonwealth to the interpretation of its provisions (that is, that Act as it stood in 1948). As both the Majority and the Minority Opinions note, a now-repealed Synod Rule, Rule XIX, also applied the 1948 Act to the interpretation of Canons made prior to 1996 (such as the 1992 Canon authorising the Wangaratta blessing service) – see Majority Opinion at para 138, Minority Opinion of Member Gillian Davidson (herself a senior lawyer) at para 8.

## Is the blessing of a same-sex marriage, then, inconsistent with the ‘doctrines of the Church’ or the Fundamental Declarations?

At first glance the answer seems obviously, yes.

The 2017 resolution of General Synod, noted above, stated that the ‘doctrine’ of the Church is that ‘marriage is an exclusive and lifelong union of a man and a woman’. The very fact that the words of the service, as previously noted, refer to the union of same-sex parties as a ‘marriage’, stands in sharp contradiction to the words of this resolution.

Further, no-one can deny that the long-standing view of the Christian church from the earliest of times (‘the Christian Faith as professed by the Church of Christ from primitive times’ as s 1 of the Fundamental Declarations puts it) was that homosexual activity was contrary to God’s will. It seems then that Scripture (‘the ultimate rule and standard of faith given by inspiration of God’, s 2) itself speaks clearly on the topic. In Romans 1:26–28 Paul refers to homosexual activities as ‘shameless acts’ warranting God’s judgment, and in 1 Corinthians 6:9–10 he says that ‘men who practise homosexuality’ are among those who will not inherit the kingdom of God. These matters and many others are brought together with clarity in Member Davidson’s dissent.

Finally, for the moment, the Tribunal was provided (pursuant to s 58 of the Constitution noted above) with opinions from the House of Bishops and the Board of Assessors which answered the very specific questions asked by the Tribunal in ways which were clearly consistent with the Minority Opinion of Ms Davidson.

**But the majority disagree**, concluding that a blessing of a same-sex union is not inconsistent with the ‘doctrines of the Church’. They do so by narrowing the meaning of the word ‘doctrine’.

They start by noting that there is a definition of ‘doctrine’ provided in s 74(1) of the Constitution:

‘Doctrine’ means the teaching of this Church on any question of faith.

But they say that this does not provide any clear guidance – see para 143. Nor does the somewhat circular comment in s 74(4) that ‘any reference to faith shall extend to doctrine’.

The majority then express their commitment to the principle of *stare decisis*<sup>8</sup> (see para 158: the Tribunal ‘will not lightly depart from its earlier decisions on matters of constitutional import’) and say that they will adhere to previous Tribunal decisions on the question (see para 166: ‘We are not disposed to depart from the settled meaning of ‘doctrine’ in the Constitution’). What, then, is this ‘settled meaning’?

The majority claim that comments of four members of the Tribunal in 1987 determine the meaning of the word ‘doctrine’. They are as follows:

### Archbishop Rayner

- » From para 148: “‘Doctrine’ must therefore be understood in the Constitution as the Church’s teaching on the faith which is necessary to salvation.”

### Justice Handley

- » From para 150: Member Handley was quoted as saying that propositions which are ‘not part of the Christian faith professed by the Church, [...] not dealt with in the Creeds, and do not directly involve matters necessary for salvation’ are not a matter of ‘doctrine’.<sup>10</sup> Even on a reading of this statement most generous to the majority view here, Mr Handley is offering three criteria for ‘doctrine’, not the single ‘necessary for salvation’ one. When his whole statement is seen in context, he is saying that ‘doctrine’ takes its meaning from the context of the use of the word ‘faith’ in s 1 of the Constitution, and just prior to the quote used here he says:

The definition of faith in Section 74(1) is not at all helpful but the sense in which the word is used in the Constitution appears from Section 1. This refers to the Christian faith as professed by the Church of Christ from primitive times and in particular as set forth in the creeds.<sup>11</sup>

- » So it seems clear that the question of what was professed ‘from primitive times’ is a major criterion, though he goes on to add the other two as noted. But there is no way that his position can be taken to mean that something is only ‘doctrine’ if it is ‘necessary for salvation’.

8 Latin, ‘the decision stands’; this is the legal doctrine of precedent where a court is bound to follow previous decisions.

9 Archbishop Rayner, *Report of the Appellate Tribunal Re Ordination of Women to the Office of Deacon Canon 1985* 4 March 1987 (‘the March 1987 Opinion’), at p 49.

10 The quote is taken from pp 115–16 of the March 1987 Opinion.

11 Ibid 115.

## Justice Young

- » Another quote offered in support of the majority view, at para 149, is a lengthy quote from Young J from the March 1987 Opinion which contains no reference at all to the supposed ‘necessary for salvation’ criterion. Perhaps the only part of the quote which might support the majority view is that Young J says that the provisions of the Constitution ‘make a very definite distinction between the rules of order and conduct on the one hand, and the teaching of the Church in matters of faith on the other’. So perhaps the quote is included to distinguish ‘rules of conduct’ as propositions of morality, from other propositions. But the quote is quite unclear, and as noted makes no reference to the ‘necessary for salvation’ criterion.

## Justice Tadgell

- » Finally, at para 151 the majority refer to the 1987 comments of Tadgell J which also make no reference to a ‘necessary for salvation’ criterion, but as to which they comment: ‘we understand him to be referring, like the others in the majority, to ‘doctrine’ in the narrow constitutional sense’. What this ‘narrow’ sense is, with respect, not fully explained by the quotes offered.

In the end, the support that the majority find for a view that ‘doctrine’ is restricted to that which is ‘necessary to salvation’ can only be found in the quote provided from Archbishop Rayner. Yet in the context even this quote does not support their conclusion. This is clearly demonstrated by the Minority Opinion of Member Davidson, at paras 123ff of her Opinion. I recommend a reading of her full analysis, but in brief it is as follows.

In the relevant comment from Archbishop Rayner, there is ambiguity as to which word the final ‘which’ clause is meant to be attached. The majority view here takes it to be attached to the word ‘teaching’, meaning that doctrine is only ‘teaching... necessary to salvation’. But the other view, demonstrated to be much more likely, is that it is attached to the word ‘faith’, so that the reference is to the teaching of the Church concerning the ‘faith which is necessary to salvation’, i.e., the Christian faith. As Member Davidson notes, on p 49 of the March 1987 Opinion the Archbishop immediately goes on to make ‘faith’ the subject of his next sentence:

That faith is grounded in scripture and set out in the creeds; and the Church’s doctrine or teaching on that faith may be explicated and developed, provided it is always subject to the test of scripture. For reasons already advanced, I do not see the limitation of ordination to males as required by scripture, nor is it referred to in the creeds.<sup>12</sup>

Agree or not with the Archbishop’s views on this point, his criteria for determining ‘doctrine’ seems to be ‘scripture’ and ‘the creeds’, with no reference to some sub-set of scriptural views that are ‘necessary to salvation’. As Member Davidson illustrates (at para 36):

If doctrine is only that teaching which is necessary for salvation, and if, as Article VI requires, Scripture contains everything necessary for salvation, then why would Archbishop Rayner state that ‘doctrine or teaching on that faith may be explicated and developed, provided it is always subject to the test of scripture’?

12 March 1987 Opinion p 49.

But that in the end seems to be the view that the Majority Opinion adopts. They assert without any clearer explanation that ‘the settled meaning of “doctrine” in the Constitution’ (at para 166) is this ‘narrow’ view that something is only doctrine if ‘necessary for salvation’ (see para 177). They conclude that ‘none of the BCP [Book of Common Prayer] teachings about marriage are “teaching(s) on the faith which is necessary to salvation”’ (at para 180).

As previously indicated, this reasoning is not persuasive. A narrow reading of previous comments, taken out of their initial context, has led the majority into error. The Minority Opinion of Ms Gillian Davidson spells this out in much more detail.

## Possible future (secular) consequences

This narrow view of the word ‘doctrine’, offered by the majority of the Appellate Tribunal as a formal understanding of the word for the Anglican Church of Australia, has the potential to have far-reaching impacts in other areas of the law. A specific example can be seen in the decision of the Victorian Court of Appeal in *Christian Youth Camps Ltd v Cobaw Community Health Service Ltd* (2014) 308 ALR 615; [2014] VSCA 75, where, by a 2:1 majority the Victorian Court of Appeal ruled that the organisation Christian Youth Camps Ltd (CYC) was liable for sexual orientation discrimination when it declined a booking for a weekend camp from a youth support group affirming the validity of same-sex activity.<sup>13</sup> A key part of the defence offered in that decision by CYC was that s 75 of the *Equal Opportunity Act 1995* (Vic) meant that religious groups were not liable for discrimination if their actions conformed with ‘the doctrines of the religion’.

President Maxwell, who gave the majority decision on this point, accepted the ruling of a lower Tribunal which had adopted the submission of a theological expert that ‘doctrines’ of the Christian faith were to be confined to matters dealt with in the historic Creeds, none of which mentioned sexual relationships: see paras 276–7. Of course, the Majority Opinion of the Appellate Tribunal will not formally be binding on a court in the ‘mainstream’ legal system, but the fact that the Appellate Tribunal’s opinion was supported by a senior retired President of the NSW Court of Appeal means that it may have influence as a ‘persuasive’ precedent on a later court.

It has to be said that the decision of the Victorian Court of Appeal on this point is by no means clearly the correct view of the matter under the general law. A contrasting approach can be found in the decision of the NSW Court of Appeal (decided after Mr Mason’s retirement in 2008) in *OV & OW v Members of the Board of the Wesley Mission Council* (2010) NSWCA 155. There the Court of Appeal (Allsop P, Basten JA & Handley AJA) held that the Equal Opportunity Division of the Administrative Decisions Tribunal (EOD) had been in error in its reading of a similar defence in a case involving the actions of the Wesley Mission in declining to place a foster child with a same-sex couple. The EOD at first instance had ruled that ‘doctrine’ in the defence provision in s 56 of the *Anti-Discrimination*

<sup>13</sup> For a detailed analysis of the decision, see Neil J Foster, ‘Christian Youth Camp liable for declining booking from homosexual support group’ (2014); available at: [http://works.bepress.com/neil\\_foster/78/](http://works.bepress.com/neil_foster/78/).



*Act 1977* (NSW) had to be a ‘doctrine’ agreed upon by the whole of the Christian church. The Appeal Division had overturned this ruling, holding that it was sufficient for a belief to be relevant for it to be one shared by a ‘sub-section’ of the church, such as that represented by the teachings of John Wesley. The Court of Appeal agreed with this ruling and expressed no doubts that a belief in man/woman marriage as the norm for a family could be regarded as a ‘doctrine’ of the Wesleyan Mission. For example, they commented at para 54:

The question the Tribunal needed to address was whether a refusal in 2003 to consider an application to authorise a same-sex couple to foster a child conformed at that time with the doctrines of the religion which the Wesley Mission was, as at 2003, established to propagate.

On referral back to the EOD, in *OW & OV v Members of the Board of the Wesley Mission Council* (2010) NSWADT 293, the members of the EOD accepted that views on homosexual activity formed part of the ‘doctrine’ of the church.

[33] ... [W]hile there is no relevant doctrine of the Uniting Church which would bind the Wesley Mission the **Mission itself is entitled to propagate its own doctrines on the subject of homosexuality** and may do so by teaching or other means not necessarily amounting to the formal pronouncement of a ‘doctrine’.

[34] In our opinion the statements made by Dr Garner quoted above encapsulated in paragraphs 54 and 58 of his affidavit constitute a ‘doctrine’ within the meaning of s 56 of the religion which the Wesley Mission was established to propagate in 2003. (emphasis added)

These decisions simply illustrate that the question of whether a view on sexual morality may be a ‘doctrine’ of a church arises in the secular courts as well as in the Anglican Church of Australia, and unfortunately the narrow view taken by the Majority Opinion of the Appellate Tribunal may encourage a narrow view of the word to be taken by such courts in the future, with the result that clauses protecting religious freedom may be unduly read down.

## Some sharp questions for the Anglican Church of Australia and its General Synod

Other parts of the Majority Opinion, while on the one hand disclaiming any intention of settling controversial theological points, seem clearly directed at opening up the way for the ACA to fully recognise same-sex marriages as ‘marriage’ for the purposes of the church. The history of changes in marriage law is presented as if all elements of the institution were apparently open to revision at any time, with no serious attempt being made to see how the Bible’s view of the man/woman marriage covenant informs the overall movement of biblical theology. At one stage an attempted definition of the ‘core’ elements of marriage is offered:

[18] Despite the variations in the law and practice of marriage over time and place, there must be core elements of the institution. These appear to include human actors of the age of sexual maturity; intention as to permanency; and (a basic level



of) mutual consent. In the setting of the Australian Constitution, the High Court of Australia suggested that the juridical concept of ‘marriage’ refers to:

‘a consensual union formed between natural persons in accordance with legally prescribed requirements which is not only a union the law recognises as intended to endure and be terminable only in accordance with law but also a union to which the law accords a status affecting and defining mutual rights and obligations.’<sup>14</sup>

The quotation from the High Court of Australia decision affirming that ‘marriage’ for the purposes of the *Commonwealth Constitution* can be extended to same-sex relationships is significant. Like the Appellate Tribunal here, the High Court felt obliged to offer a ‘core’ set of elements of marriage to avoid the label being completely emptied of meaning. But like the Appellate Tribunal, the High Court offered no compelling reason based on the purposes of the institution as to why its list, rather than some other list, should be adopted. Indeed, the Appellate Tribunal feels the need to supplement the High Court’s criteria for its own purposes, adding ‘sexual maturity’ and ‘consent’ to the court’s woefully inadequate set of criteria.

At least the High Court decision, if it is not free from criticism,<sup>15</sup> can perhaps be understood, because the Court is a secular tribunal trying to come up with a definition that is suitable for a multi-faith country. But the Appellate Tribunal is meant to be a body tasked with operating as a key part of the Anglican Church of Australia, holding ‘the Christian Faith as professed by the Church of Christ from primitive times’, and committed to ‘obey the commands of Christ, teach His doctrine, administer His sacraments of Holy Baptism and Holy Communion, follow and uphold His discipline’. Yet the Appellate Tribunal has devised a set of core elements of marriage which deliberately exclude the man/woman covenant that Scripture and tradition place firmly at the centre of the relationship. The ‘discipline’ of the Lord Jesus addresses behaviour in accordance with the Creator’s purposes, and affirms that sexual immorality (which there can be no doubt includes homosexual activity) defiles a person in God’s sight: see Mark 7:20–23,

And he said, ‘What comes out of a person is what defiles him. For from within, out of the heart of man, come evil thoughts, **sexual immorality**, theft, murder, adultery, coveting, wickedness, deceit, sensuality, envy, slander, pride, foolishness. All these evil things come from within, and they defile a person.’ (emphasis added)

And yet this ‘defiling’ behaviour, the Appellate Tribunal majority asserts, may now receive the blessing of the church. Not only that, but other passages in the Majority Opinion, while recognising that ‘at the moment’ church law does not allow same-sex marriage, seem designed to make the argument that it should. See the following:

[39] it **may be taken** that the canon law of the ACA **presently** restricts solemnisation of matrimony to the wedding of one man and one woman...

14 *Commonwealth v Australian Capital Territory* (2013) HCA 55, 250 CLR 441 at [23].

15 See the short but compelling critique by highly respected constitutional scholar Prof Anne Twomey: ‘Same-Sex Marriage and Constitutional Interpretation’ (2014) 8 *Australian Law Journal* 613–616.

[70] No one argues in this Reference that it is **presently** lawful for a same-sex marriage to be solemnised in the ACA... (followed by an extensive review of how marriage law has changed over time)

[74] Many of the Biblically-justified incidents of what was sometimes called ‘Christian marriage’ have since 1662 been varied by the Church of England and/or by the ACA and/or by the State with the acquiescence of those Churches....And it presents the question of identifying **why the teaching about a monogamous heterosexual union is in a different legal category...**

[179] The General Synod may decide to make no more changes to the 1662 ‘doctrine of marriage’ but we have **not discerned a constitutional barrier** against this. (emphasis added)

The final quote is the most significant. It virtually amounts to an invitation for someone to challenge the current church view that same-sex marriage should not be approved. Indeed, it seems apparent that if the majority view were accepted, that a previously concluded same-sex ‘marriage’ under civil law could lawfully be blessed by an approved liturgy, then it takes little foresight to see that there will be immediate pressure to change the reluctantly accepted view ‘presently’ held by the church that such a union should not be given full liturgical ‘marriage’ status.

Even if the majority’s narrow criterion of ‘necessary to salvation’ is accepted, it seems hard to understand why the majority do not accept that active support for homosexual activity does not meet that criterion. In one of the main passages that addresses the topic in the New Testament, 1 Corinthians 6:9–11, we read:

Or do you not know that the unrighteous will not **inherit the kingdom of God**? Do not be deceived: neither the **sexually immoral**, nor idolaters, nor adulterers, nor **men who practise homosexuality**, nor thieves, nor the greedy, nor drunkards, nor revilers, nor swindlers 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. (emphasis added)

The passage is quite clear: salvation (inheriting the kingdom of God) is not offered to the ‘unrighteous’ who are unrepentant. Yes, the gospel of free grace says that forgiveness for all these sins is available, when someone repents and puts their trust in the Lord Jesus Christ. But the behaviours listed in vv. 9–10, if unrepentantly persisted in, will mean that a person is not accepted as forgiven and will be excluded from the kingdom. One of those behaviours is homosexual activity. Support for homosexual activity is, then, a question of salvation. But while acknowledging that this passage speaks to matters that relate to ‘salvation’ in para 214, the Appellate Tribunal insists that it cannot be a matter of constitutionally relevant ‘doctrine’.

In the end, perhaps wavering again in its restriction of ‘doctrine’ to matters ‘necessary for salvation’, the majority conclude:

[258] But we have not been persuaded that the particular Wangaratta blessing service contravenes any commands of Christ, doctrines in the canonical scriptures or even doctrines recognised in the formularies of the Church in such a way as to reveal inconsistency with the Fundamental Declarations.

The fact is that the word ‘doctrines’, when used in the Constitution, seems to have the obvious meaning of teachings on matters that relate both to faith and conduct, and that is the way that most members of the Anglican Church of Australia would approach the matter if they were not seeking to avoid the consequences of the clear teachings of Scripture.

In the end, the answer suggested by the majority is that the Church takes steps to clarify its position through its governing synod and Bishops:

The application of that teaching on salvation to the matter at hand is a task for the discernment of the General Synod, diocesan synods and Bishops.

The majority – whilst conveniently ignoring that General Synod only recently described the teaching that marriage is a covenant between a man and a woman, and did so while the change to the *Marriage Act* that allowed same-sex unions was being debated – concludes:

General Synod is the place to draw disciplinary or liturgical lines if it is the will of the Church to have uniformity in this particular matter or in the matter of what may or may not be blessed in worship. [226]

All that one can say is that it is to be hoped that General Synod will speak, once more, with a clearer voice on this topic when it comes to consider the matter; to bring clarity to the bedrock questions raised by this Majority Opinion.

# The Minority Opinion

## *A commentary*

ALEX MILNER

### Introduction

Steven Spielberg's 2002 film *Minority Report* imagined a future where crime was eliminated through the creation of a special three-person 'pre-cognitive' unit with the ability to predict the future and see potential crimes before they occurred. This way the crimes could be prevented and the (future) perpetrators stopped in advance and charged with 'pre-crime'. The system depended upon the reliability of the predictions from the three clairvoyants (each called a 'Pre-Cog'). The plot of the film develops when it is discovered that one of the Pre-Cogs does not see the future in exactly the same way as the others and that alternative visions of the future (minority reports) are being ignored and suppressed for fear that the public will come to doubt the reliability of the system.

By contrast, in our legal system, well written and argued minority or dissenting opinions are not a flaw but rather a key strength.

A good dissenting opinion will show the weaknesses of the majority's position and expose the issues that the majority may not have properly addressed (or chosen not to address). Such an opinion reminds us that the views of lawyers and judges are rarely unanimous, especially on contentious issues and, as such, the resulting opinions are not 'written in stone' and handed down from Mount Sinai as such, but rather reflect the back and forward argumentation and searching for the truth that St Paul might have encountered at the Areopagus in Athens.<sup>1</sup>

For these reasons, good dissenting opinions are often given great weight and frequently become the leading opinions adopted by courts in future. When I was in law school, I remember being encouraged to read the minority, dissenting opinions of Lord Denning (House of Lords), Justice Murphy (High Court) and Justice Kirby (New South Wales Supreme Court)<sup>2</sup> as the better predictor of future case law. Perhaps the apex of dissenting opinions was those of Lord Atkin, an Australian born lawyer who was elevated to the House of Lords. Of one of his dissenting opinions in 1942,<sup>3</sup> the House of Lords subsequently stated (in 1980) that 'the time has come to acknowledge openly that the majority of this

1 Where St Luke reminds us, 'All the Athenians and the foreigners who lived there spent their time doing nothing but talking about and listening to the latest ideas.' (Acts 17:21)

2 And, later, on the High Court (but that was after I had finished my degree).

3 In *Liversidge v Anderson* (1942) AC 206.

House... were expediently and, at that time, perhaps, excusably, wrong and the dissenting speech of Lord Atkin was right'.<sup>4</sup> Our own High Court in 1990, some fifty years after Atkin's original opinion, described it as 'Lord Atkin's famous, and now orthodox, dissent'.<sup>5</sup>

For a dissenting opinion to reach such status, it needs to be well argued, principled and be able to place the explanation of the law that is relevant for the particular case within a broader compelling context (or worldview). A dissenting opinion stands or falls on the strength of its arguments and its ability to convince those who may be undecided or may not have considered the opposite view.

Gillian Davidson's Minority Opinion in the Wangaratta and Newcastle references is a clear candidate to become a good dissenting opinion: the one that will be referred to and relied upon in future opinions of the Appellate Tribunal and decisions on the key issues they address within our Church. This paper will focus on her Minority Opinion in the Wangaratta reference, as her reasoning there is applied in the Newcastle reference as well.

## Addressing the issue squarely

Ms Davidson's Opinion commences by ensuring that it addresses the key issue of substance and does not seek to avoid it. So, she proceeds on the basis that the Wangaratta Regulations are intended to be used in the blessing of same-sex marriages where the relationship is sexual. This was clearly the intent of the Synod of Wangaratta. For this reason, the Diocese of Wangaratta included in its submissions a copy of the Rev Canon Professor Dorothy Lee's address to the Wangaratta Synod where she acknowledges that 'There are admittedly a handful of texts that, at first glance, seem to rule out same-sex partnerships', referring to 1 Timothy 1:9–10, Romans 1:26–27 and 1 Corinthians 6:9. Her argument is not that same-sex partnerships may not involve a sexual relationship; rather she argues that '[i]t is not at all clear that what Paul is speaking of is covenant partnerships between same-sex couples.'

By contrast, the Majority Opinion asserts that a same-sex marriage may be celibate and therefore not (necessarily) involve any sexual immorality. The majority's argument is marginal at best; it is as if a minor point in pleadings has been latched onto and everything thereafter made to turn on it. Its position is one that no-one in the present debate advocated for, nor could they accept, whatever their respective theological views. It does not address the situation where a same-sex marriage is not celibate and therefore does involve sexual immorality.

## Framing the context rightly

The Minority Opinion addresses the question as to whether our Constitution permits the blessing of same-sex marriages within the proper constitutional framework by starting with the question: 'What is the place of the Constitution?'

4 *IRC v Rossminster Ltd* (1980) AC 952, at 1011 (Lord Diplock).

5 *George v Rockett* (1990) 170 CLR 104 at 112.

Ms Davidson argues that the Constitution is a unifying document which sets out the basis for the Australian dioceses to unite as ‘The Anglican Church of Australia’, with a professed and coherent teaching and order. She writes:

[54] In my opinion, a construction of the Constitution which results in one unified, coherent body of believers, based on solid Apostolic foundations, must be preferred to a view which would allow different constituent parts of the Church to teach diametrically opposite positions on matters of salvation. To put it simply, it is incoherent for one Diocese to bless behaviours which the rest of the Church would condemn as risking salvation.

By contrast, the approach of the Majority Opinion is to construe the Constitution – and, in particular, the word ‘doctrine’ – so narrowly that its construction would allow one diocese to adopt an incoherent and (truly) divisive measure even though that same measure was condemned by the rest of the Australian Church as risking salvation. In essence, the majority argues that the constitutional bonds are so weak that dioceses may pursue divergent and contradictory paths, and each may do what is fit in their own eyes.<sup>6</sup> In doing this, the Majority Opinion does not satisfactorily address the questions in their proper constitutional context.

## Applying Scripture faithfully

The Minority Opinion reminds us that the Fundamental Declarations in the Constitution boldly assert that the Church of England in Australia sits within ‘the one Holy Catholic and Apostolic Church of Christ’. That is, the Church is ‘within that group of Churches which self-consciously trace their origins back to Apostolic times and see that the Faith has been truly declared in the two creeds.’<sup>7</sup>

The Minority Opinion then examines the works of the leading historians, theologians, Scripture, and the *Book of Homilies* and concludes that, whilst the Church is always to show love, ‘[o]n the other hand, it is very difficult to maintain that the Bible and the commands of Christ or the witness of the Church Universal is anything else but opposed to same-sex practice.’

Ms Davidson, in a heartfelt personal aside, models this approach perfectly by acknowledging in her opinion how difficult this conclusion may be for some, ‘particularly to those who have felt saddened, denied or malnourished by their experience of the church.’<sup>8</sup> She laments ‘any pain in the same way I lament having to break the news of a hard or difficult truth to someone I love.’ And yet she does so ‘trusting that the word of God is for our good, and mindful that God is a merciful God who delights to bless his people graciously and faithfully and the opinions of this Tribunal will not alter that fact.’ That is, she is speaking the truth in love.<sup>9</sup>

6 Judges 17:6, 21:25.

7 Minority Opinion para 75.

8 Minority Opinion para 26.

9 Ephesians 4:15.



## Applying the law correctly

For those who are minded about legal precedents, the real strength of Ms Davidson's argument is probably the in-depth analysis of previous opinions of the Appellate Tribunal, including the key 1985<sup>10</sup> and 1987<sup>11</sup> opinions which stated the Tribunal's opinion (or, rather, opinions) as to the meaning of the phrase 'no alteration in or permitted variations from the services or articles therein contained shall contravene any *principle of doctrine* or worship' (s 4 of the Constitution, emphasis added). Her Opinion addresses each of the views expressed in both the 1985 and 1987 opinions in detail and shows that a proper application of those opinions is that a 'principle of doctrine' has been understood by the Appellate Tribunal in a multitude of ways, including:

- |  |  |
|--|--|
| a) 'a fundamental truth or proposition on which many others depend';   | Young, Tadgell, Rayner and Holland, 1985 Report; and Young, Tadgell, Holland, 1987 Report. |
| b) 'taught by the Church about the faith which is not inconsistent with Scripture or the creeds';  | Rayner, 1987 Report.   |
| c) 'part of the Christian faith professed by the Church';  | Handley, 1987 Report.  |
| d) 'part of the doctrine and principles of the Church of England retained and approved by this Church, as embodied in the Book of Common Prayer and Thirty-nine Articles'; and   | Robinson, 1987 Report.   |
| e) 'a general law or rule adopted or professed as a guide to action; a settled ground or basis of conduct or practice; a fundamental reason of action, esp. one consciously recognized and followed (often partly coinciding with sense (a)—viz. fundamental truth or proposition, on which many others depend), whether stated in a deliberate manner (so as to end controversy) or treated as self-evident'. <sup>12</sup> | Cox, 1985 and 1987 Reports.  |

Relevantly she concludes that the following are principles of doctrine contained in the *Book of Common Prayer* which are contravened by the Wangaratta Regulations:

- a) that Christian marriage is limited to heterosexual relationships (and hence same-sex marriage is not permitted);
- b) that persistence in sexual immorality endangers salvation (and hence cannot be blessed or encouraged by the Church); and
- c) that our practice and worship should be consistent ('common') in furtherance of the good order of the Church (and hence, wide divergences on core matters are not permitted).

10 Opinion of the Appellate Tribunal, Ordination of Women, dated 14 August 1985 (1985 report).

11 Report of the Appellate Tribunal re Ordination of Women to the Office of Deacons Canon 1987 (1987 report).

12 Minority Opinion paras 28–37, 114–140.

By contrast, the Majority Opinion seeks to constrain the word ‘doctrine’ and limit it to only those matters necessary for salvation. It does this in reliance on a statement by Archbishop Rayner in the 1987 Report: “‘Doctrine’ must therefore be understood in the Constitution as the Church’s teaching on the faith which is necessary to salvation.”<sup>13</sup> The Minority Opinion shows that the Majority Opinion has taken this phrase out of context. The Majority Opinion, then, incorrectly asserts that this narrow view reflects the rest of the 1987 Tribunal;<sup>14</sup> the Minority Opinion shows that this claim is false.<sup>15</sup>

## Following the constitutional process

Section 58 of the Constitution sets out a process for the Appellate Tribunal to seek the opinions and guidance of the House of Bishops and the Board of Assessors. The Appellate Tribunal did so in the Wangaratta reference.

In that reference, both the House of Bishops and the Board of Assessors provided unanimous advice that unrepentant persistence in sexual immorality risks a person’s salvation. On the question of whether homosexual practice is permitted, the Board of Assessors’ advice is clear: ‘Scripture condemns homosexual activity and the belief that it is morally permissible for any Christian.’<sup>16</sup> The House of Bishops’ advice is less clear on this aspect; in response to the question about any doctrinal impediment or difficulty with the baptism of a child of a same-sex married couple, the House of Bishops state:

Given the promises and commitments required of parents of children to be baptised, there is certainly a difficulty, if not an impediment, when the parents are living, without repentance, in a manner which is contrary to the faith and practice of the Church.<sup>17</sup>

The Minority Opinion adopts a plain reading of both advices and reads the House of Bishops’ statement that ‘when the parents are living, without repentance, in a manner which is contrary to the faith and practice of the Church’ as a commentary about the subject of the

13 Majority Opinion para 180. See also the 1987 Report, see above fn 11, p 54. Note that the Majority Opinion incorrectly claims that Justice Cox agreed with Archbishop Rayner on this point; see paras 128–138 of the Minority Opinion for a detailed rebuttal of this view.

14 Majority Opinion paras 166 (the claim that there is a ‘settled meaning of “doctrine” in the Constitution’), 180 (generally), 248 (‘the reasoning of Archbishop Rayner that we have adopted’) and 290 (‘the statement of Archbishop Rayner which we have adopted’).

15 Minority Opinion para 14.

16 Board of Assessors report Question 4 para 4(a).

17 House of Bishops report Question 4, para 4; see also paras 5 and 6: ‘[5] ... some members of the House of Bishops consider the moral disposition of the parents is not an impediment to the child’s baptism and that the prayer for the child’s parents assumes nothing about the moral status of the couple’s relationship.

[6] The proper presentation of a child for baptism, by parents or godparents, should always be accompanied by an appropriate period of preparation in which the promises they make in response to God’s offer of salvation are explained, including an invitation to receive God’s grace and the forgiveness of sins for themselves. As such, any impediment in the baptism of a same-sex couple is largely addressed by a sensitive, pastoral ministry on behalf of the minister towards the parents.’

question; namely a same-sex married couple.<sup>18</sup> That is a fair reading of the House of Bishops' advice.

For these reasons, the Minority Opinion concludes, necessarily, that the Wangaratta Regulations are inconsistent with Scripture and the teaching of the Church.<sup>19</sup>

One of the more perplexing features of the Majority Opinion is that, having concluded that 'doctrine' must be construed narrowly as only that teaching on the faith which is necessary to salvation, it then refuses to follow the unanimous opinions from the House of Bishops and the Board of Assessors which state that persistence in sexual immorality *risks a person's salvation*.

## Where to from here?

The twist in Steven Spielberg's 2002 film *Minority Report* was that once the 'Pre-Cogs' issued a prediction of the future, the subjects of the report could then decide what they did with that report. Were they bound to follow slavishly what the report predicted or, knowing what the future might hold, could they take different steps to change the future and avoid their predicted fate? That is, the issuing of the report predicting the future had the potential to change the future.

Are we now in a similar position with the publishing of the Majority and Minority Opinions of the Appellate Tribunal? As a Church, do we slavishly follow the reasoning and approach of the majority into a fractured and divided future? Do we accept or reject the majority's weak and fractured view of our unity under the Constitution? We know from elsewhere, be it New Zealand, the USA or Canada, where that wide path leads.

Or, instead, do we pause, take stock, and then choose as a National Church to adopt and follow the approach outlined so clearly and thoughtfully by Ms Davidson in the Minority Opinion? Now that we have the reports, it is for us as a Church to choose what future, under God's sovereignty and guiding, we will pray for and strive to become.

<sup>18</sup> Minority Opinion para 88.

<sup>19</sup> Minority Opinion paras 88–93.

## THEOLOGICAL CONSIDERATIONS



# Theology and the Majority Opinion

MARK THOMPSON

Opinions of the Appellate Tribunal are not, strictly speaking, statements of theology. The Majority Opinion we are considering repeatedly stresses this fact: ‘The Appellate Tribunal is not constituted to be a final court of appeal for the Church on contested theological matters’ (para 239).

**R**ather, its duty is ‘to confine itself to constitutional issues’ (para 28). Notwithstanding the fact that membership of the Tribunal includes three bishops, the opinions it delivers are meant to be legal rather than theological, in keeping with the references made to it.

Yet the reality is not quite as straightforward as that. The Opinion cites the words of Justice Handley that the Appellate Tribunal ‘only decides theological issues for the purpose of or in the course of determining legal questions arising under the Constitution’ (para 7). It is impossible to ignore matters of theology altogether. Matters of church life and ministry, including the constitutional documents of denominations, are inextricably bound to theological considerations. This chapter considers some of the theological issues arising from the Majority Opinion of the Appellate Tribunal concerning the Primate’s References regarding the Wangaratta Blessing Service (11 November 2020).

An important theological issue touched upon by the Opinion is the nature of doctrine. Others include the nature and use of Scripture, the nature of sin and grace, but, especially, the nature and purpose of marriage. The Opinion makes passing comments on a number of biblical texts, very largely to dismiss their relevance to the constitutional question at hand. This all leads to the rather extraordinary conclusion that there is no “command of Christ” directly referable to the issue of the Wangaratta blessing service or what it purports or seeks to do’ (para 253).

## Doctrine

The argument about what constitutes ‘doctrine’ according to the Constitution is a critical element of the Majority Opinion. Indeed, an important summary statement announces that



‘Accordingly, based upon the *Constitution’s* meaning of “doctrine”, we would conclude that there is no inconsistency with the “doctrine” components of the Fundamental Declarations’ (para 181, *italics original*).

The important definitional statements in the Constitution are found in s 74(1):

‘Doctrine’ means the teaching of this Church on any question of faith.

‘Faith’ includes the obligation to hold the faith.

These definitions then inform how these words are to be read when they appear in the important foundational sections of the Constitution (ss 3–4, *emphasis added*):

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

4. This Church, being derived from the Church of England, retains and approves the *doctrine* and principles of the Church of England embodied in the Book of Common Prayer together with the Form and Manner of Making, Ordaining and Consecrating of Bishops, Priests and Deacons and in the Articles of Religion sometimes called the Thirty-nine Articles ... the above-named Book of Common Prayer, together with the Thirty-nine Articles, be regarded as the authorised standard of worship and *doctrine* in this Church, and no alteration in or permitted variations from the services or Articles contained shall contravene any principle of *doctrine* or worship laid down in such a standard.

The definition and the opening sections of the Constitution would appear to endorse a broad understanding of doctrine. It concerns ‘*any* question of faith’, it extends beyond the specific commands of Christ to everything that he taught, and it is embodied in the *Book of Common Prayer*, the Ordinal and the Thirty-nine Articles. It is not limited to what is contained in the Creeds, nor to any specific doctrine such as ecclesiology (the doctrine of the church) or soteriology (the doctrine of salvation).

The understanding of ‘doctrine’ in the Constitution cannot be hermetically sealed off from the use of the term in theological discourse more generally or in general Christian conversation. The word simply means ‘teaching’ and derives from the Latin word to teach, *doceo*. In a famous article discussing the various names used by theologians for the work they do, Colin Gunton wrote: ‘Christian Doctrine has the advantage of being straightforward, referring as it does to those things taught by Christians ...’<sup>1</sup> So ‘*His* doctrine’ means the things that Christ taught; ‘the doctrine of the Church of England’ means the teaching that is embodied in the *BCP*, Ordinal and the Thirty-nine Articles; and the *BCP* and the Thirty-nine Articles as ‘the authorised standard of worship and doctrine’ means that these documents determine and hold accountable the Church’s response to the person, character and majesty of God as well as what is taught in this Church. This much ought to be straightforward.

1 C. E. Gunton, ‘A Rose by any other Name? From “Christian Doctrine” to “Systematic Theology,”’ in *Intellect and Action: Elucidations on Christian Theology and the Life of Faith* (Edinburgh: T. & T. Clark, 2000), 20.

Nevertheless, the Opinion insists upon a narrow interpretation of the word ‘doctrine’. Despite the fact that the phrase ‘all things necessary for salvation’ is not directly linked to any of these occurrences of the word ‘doctrine’ in the Constitution (it appears in s 2 with reference to what is contained in the canonical Scriptures of the Old and New Testaments), the Opinion insists this phrase circumscribes what the Constitution considers to be doctrine. Why is this? The Opinion relies on minority comments made by former Archbishop Keith Rayner and Justice Ken Handley in an opinion of the Appellate Tribunal delivered in 1987. These particular definitional comments were not supported by the majority of the Tribunal at that time, though the two members who made them endorsed the conclusion of the majority in that particular opinion. Archbishop Rayner, who appealed to the words in s 2 and Article VI, opined that “‘Doctrine’ must therefore be understood in the Constitution as the Church’s teaching on the faith which is necessary to salvation’ (quoted in para 148). Justice Handley concluded that the questions being dealt with at that time, to do with the ordination of women to the diaconate, did not ‘involve any principle of “doctrine” as that expression is used in the Constitution’, since ‘they are not dealt with in the Creeds, and do not directly involve matters necessary for salvation’ (quoted in para 150).

Such a narrowing of the definition of doctrine has no warrant. As we have seen, the phrase ‘necessary for salvation’ does not occur in connection with the word ‘doctrine’ in the Constitution. It occurs in the previous section and has to be read into ss 3 and 4. Furthermore, a cursory examination of the literature of the English Reformation would reveal that the interest of the framers of the Forty-two Articles (later reduced to Thirty-nine) was not limited to matters of salvation, nor to matters dealt with in the Creeds. The doctrine of the church, its authority and relation to the ‘word of God written’, dealt with at length in the Thirty-nine Articles, is a case in point. So, no amount of asserting that there is a ‘settled meaning of doctrine in the Constitution’ (para 166) or ‘the narrow constitutional sense’ (para 151) suffices to establish the case. The doctrine of Christ is what he taught (directly, or as we shall see in a minute, through those deputed to speak for him, the apostles) and the doctrine of the Church is what this Church teaches. The doctrine embodied in the *BCP* and Articles is what these formularies teach.

However, even with the narrowed definition suggested by the majority of the Tribunal, there are problems for the question at hand. The opponents of the Wangaratta measure are not the first to associate the issue of homosexual behaviour with salvation. This link is found in the teaching of Christ’s apostles, those appointed to take his teaching (‘all that I have commanded you’, Matt 28:20) to Israel and the nations, to whom Jesus had given the promise of the Spirit who ‘will teach you all things and bring to your remembrance all that I have said to you’ (John 14:26), and for whom Jesus himself had prayed, ‘Sanctify them in the truth; your word is truth’ (John 17:17). A key Pauline text, 1 Corinthians 6:9–10, is emphatic, twice stating those engaged in such behaviour ‘will not inherit the kingdom of God’. Repenting of such behaviour thus becomes a ‘matter necessary for salvation’. Contrary to the Opinion, purporting to bless unions where such behaviour is sanctioned cannot but be contrary to the doctrine of Christ and indeed the doctrine of this Church.

## Holy Scripture

Along the way, the Opinion touches upon the nature and use of Scripture. It does this in a number of ways. In a remarkable comment rejecting ‘an unduly broad meaning of doctrine’, the majority opines,

For the reasons already established, it is not enough to point to anything ‘sourced in’ the Ruling Principles or established by the formularies. Even for Holy Scriptures, as distinct from the authorised formularies, the mere provenance of a teaching in the canonical scriptures is not sufficient, because Scripture is the **‘ultimate rule and standard of faith...containing** all things necessary for salvation (Fundamental Declarations s 2, emphasis added). ‘Containing’ and ‘comprising’ are different concepts, the former carrying the meaning of holding something inside, the latter carrying the meaning of forming an exhaustive list. (para 162)

The point being made relies on the Opinion’s prior conclusion that authoritative doctrine concerns ‘all things necessary for salvation’. The authors seek to make a distinction between ‘containing’ and ‘comprising’. Given that the phrase ‘containing all things necessary for salvation’ comes from Article VI (and can be traced back via the Homilies to Chrysostom), it is surprising that no attempt is made to understand what the word meant in that context, nor is proper weight given to the use of the word ‘all’. ‘Containing all’ can hardly be reduced to ‘holding something inside’ (para 162). This might seem trifling, however an appeal to such a distinction has serious consequences for the doctrine of Scripture. If ‘containing all things necessary for salvation’ merely means ‘holding something inside’, then who decides what is (and what else might be) a matter of salvation? The effect of this brief comment in the Opinion is to cast doubt upon any appeal to Scripture.

A second line of argument found throughout the Opinion that has the same net effect involves identifying relevant biblical passages as ‘contested’. The authors do not acknowledge that there has been almost total unanimity on the meaning of the key passages (e.g. Gen 2; Matt 19; 1 Cor 6) for almost two thousand years – across cultures and theological traditions – until the more recent cultural debates about human sexuality. Instead they write of ‘the vexed exegetical and hermeneutical issues arising from quite explicit teachings of our Lord’ (para 121 with reference to the remarriage of divorced persons), ‘the untidy history of the Church’s grappling with messages of Holy Scripture as regards liturgies relating to marriage’ (para 126), ‘contested interpretations’ (para 197), ‘a spread of exegetical and hermeneutical positions’ (para 202) and ‘little consensus’ (para 208). In the end it is hard to see this as anything other than an exercise in obfuscation. Putting eccentric contemporary readings of some texts alongside a catholic (in the sense of universal) consensus stretching back two thousand years in order to insist the meaning of those texts is contested might technically be true. But the existence of revisionist challenges does not disprove the ‘catholic consensus’, which remains the most straightforward reading of the texts. The Opinion does not give an accurate picture of the situation.

A particular case in point is the Opinion’s treatment of a key biblical passage, 1 Corinthians 6:9–10.

Or do you not know that the unrighteous will not inherit the kingdom of God? Do not be deceived: neither the sexually immoral, nor idolaters, nor adulterers, nor

men who practise homosexuality, nor thieves, nor the greedy, nor drunkards, nor revilers, nor swindlers, will inherit the kingdom of God.

An attempt is made in the Opinion to suggest that the meaning of this text is too controverted to be the basis of an appeal in this matter. Reference is made to ‘little consensus as to the translation of the notoriously difficult Greek words *malakoi* and *arsenokoitēs*’ (para 208). This can be tested by a simple comparison of major modern translations:

	<i>malakoi</i>	<i>arsenokoitēs</i>
KJV	‘effeminate’	‘abusers of themselves with mankind’
ESV	‘men who practice homosexuality’	
NRSV	‘male prostitutes’	‘sodomites’
NIV (2011)	‘men who have sex with men’	
HCSB	‘anyone practicing homosexuality’	

The variety in translation does not raise questions about a right understanding of the passage and to assert that this is so is simply disingenuous. Such variety often has more to do with the intended audience and the purpose of the translation than with differences of meaning. In this case, there is a clear consensus on the meanings of these words as referring to what might be called the receptive (passive) and donative (active) roles in homosexual activity, and there are a variety of ways to express this. Three widely accepted English translations have decided to combine both of them in a phrase like ‘men who have sex with men’. There is no doubt left about what is intended by these words. What is also clear is that any suggestion that these words should be confined to a species of *abusive* homosexual conduct, rather than loving and enduring same-sex relationships, has no ground in the text itself. In passing, this text demonstrates that when the Opinion objects to ‘some of the more extreme claims about people who engage in homosexual sexual activity not entering the Kingdom of Heaven’ (para 83, referring to some of the submissions received), they are really taking issue with the apostle Paul, and more seriously still, with the Lord who commissioned him.

Taken together, these statements about, and engagements with, the text of Scripture are, to say the very least, disappointing. They seem some way from a full-bodied conviction that ‘all the canonical scriptures of the Old and New Testaments’ are ‘the ultimate rule and standard of faith given by inspiration of God and containing all things necessary for salvation’ (Constitution of the Anglican Church of Australia, s 2).

## Sin and grace

At one or two points the Opinion touches upon the wider issues of sin and grace. The Opinion charges that some have taken 1 Corinthians 6:9–10 out of context or have focused ‘on the “homosexual sins”, whatever they are, as if they were in a special class of heinousness’ (para 209). The first response to this is to agree that this has indeed been the case at times and more emphasis needs to be placed upon the fact that idolatry, adultery, theft, greed, drunkenness, reviling and swindling – if there is no repentance – will likewise exclude people from the kingdom of God. Sometimes there has been selective reporting of what has been said when this biblical text has been quoted (singling out the culturally hot topic of

homosexuality), but not always. We need to do better. The Opinion is right to echo the words of the Bishops' response that '*all sin* requires repentance and forgiveness' (para 211, emphasis added). Nevertheless, a little later in the very same chapter of Paul's letter he mentions a special characteristic of sexual sin: 'Every other sin a person commits is outside the body, but the sexually immoral person sins against his own body' (1 Cor 6:18). All sin deserves judgment, requires repentance, and can be forgiven. Yet this does not mean that all sin has the same character or the same secondary consequences.

The Opinion insists that the 1 Corinthians passage is 'one of many underpinning a theology of sin, salvation and sanctification' pointing to 'the universality of the very serious unredeemed condition of all men and women, as well as their total dependence upon God's grace through the work of Jesus and the working of the Holy Spirit' (para 211).<sup>2</sup> That may be true. Nevertheless, this is not all that Paul is doing in this passage. The context is not simply verse 11, but all of the previous chapter and, as we have seen, the second half of chapter 6 as well. In chapter 5, Paul wrote in strong terms about sexual immorality *within the congregation* (1 Cor 5:1, 9–13). Chapter 6 continues to address that concern and emphasises the seriousness, not just of sexual immorality in general, but of a range of behaviours including 'men who practise homosexuality'. The larger flow of Paul's argument depends for its force on both the serious consequences of continuing in such behaviour (v. 10) and the radical alternative of new life in Christ by the Spirit (v. 11). The striking conclusion of Paul's argument is a series of exhortations: 'Flee from sexual immorality ... You are not your own, for you were bought with a price. So glorify God in your body' (vv. 18, 18–20). This being the case, and given the function of the canonical Scriptures as defined in the Constitution ('the ultimate rule and standard of faith', s 2), how can the authors of the Opinion argue that they are unable 'to perceive with necessary clarity how the Church's doctrines of salvation and sanctification establish the constitutional invalidity of the Wangaratta blessing service' (para 212)? How can it be valid to bless behaviour that Christ, through his apostle, condemns in such strong terms?

Even more serious is the comment made in the Opinion that 'the blanket opposition to the Wangaratta service seems, to us, to turn on its head the real "doctrines" explicit in the whole of the Pauline passage, read in context' (para 214). What is meant by that becomes clear a few lines later: 'There is in *Corinthians* a "teaching on the faith which is necessary for salvation". But it is teaching about the necessity for Christ's saving grace'. However, as we have seen, while this is an element of the doctrine taught in 1 Corinthians, Paul also speaks in the same epistle about the danger of sexual immorality (including homosexual activity) alongside a number of patterns of sinful behaviour, about the need for repentance and the availability of forgiveness. To oppose the Wangaratta service because it opens the door to the endorsement of sinful behaviour and obscures the call to repentance, is not a denial of grace but rather a refusal to distort it into licence.

2 How this fits with the statement in the previous paragraph, 'St Paul is addressing the backsliding of those who have already committed themselves to Christ' (para 210) is not explained.



## Marriage

The poor quality of the theological engagement we have seen with regard to the nature of doctrine, the nature and use of Scripture, and the doctrines of sin and grace, carries over into the theological comments made about the Christian doctrine of marriage. This brings us arguably to the heart of the Majority Opinion. Once again the handling of the Scriptures is inadequate. A key text in this regard is Genesis 2:22–25, the account of the first man and woman.

And the rib that the LORD God had taken from the man he made into a woman and brought her to the man. Then the man said, ‘This at last is bone of my bones and flesh of my flesh; she shall be called Woman, because she was taken out of Man’. Therefore a man shall leave his father and his mother and hold fast to his wife and they shall become one flesh. And the man and his wife were both naked and were not ashamed.

Once again, despite two thousand years of reflection on this text, and its use in the rest of the Old Testament, and by the Lord Jesus in Matthew 19, the Opinion contends that this text is ‘contested’ by appeal to a relatively recent article that has suggested it was not so much a celebration of the two sexes in union as ‘an acknowledgement of the powerful attraction that causes human beings to seek relationship in opposition to the wishes of their parents, society or religion.’<sup>3</sup> The proper context of this teaching, the article suggested, lies in the disputes about ethnic intermarriage in the post-exilic period, rather than a creation narrative teaching about God’s intention for the human race from the beginning.<sup>4</sup> The Opinion realises this is a radical thought (para 97), but once having introduced it, the authors reference it later in their document as a means of casting doubt on the traditional understanding of these verses (para 247).

Application of the reference of Jesus to this foundational teaching in Matthew 19, in the midst of his discussion of divorce, is dismissed by the authors of the Opinion as a ‘textually- and contextually-based’ inference which is ‘reasonably contestable’ (para 248). Yet Jesus’ appeal to Genesis 2 is an appeal to the will and purpose of God ‘from the beginning’, linking Genesis 1 and the creation of humankind both ‘male and female’ and Genesis 2 with its reference to ‘the man and his wife’ becoming one flesh (Matt 19:4–5). Such an appeal is critical to Jesus’ answer about divorce, precisely because the Genesis teaching stands on its own as an authoritative declaration of the Creator’s intention for his human creatures, antecedent to discussions of divorce in Deuteronomy and the debates of the Pharisees in the first century. In contrast, the Opinion caricatures what was argued on the basis of this text by a raft of submissions to the Tribunal as ‘inferring or discerning a “doctrine” of marriage said to be directly stemming from a “command” of Christ’ (para 245). When, a few lines later, the Opinion concedes that at least some of those submissions referred to ‘Christ’s doctrine’ rather than ‘Christ’s command’, it retreats again to the narrow definition of doctrine it has tried to establish earlier as ‘the constitutional definition of “doctrine”’.

Recognising that the Thirty-nine Articles say little about marriage except to endorse the

3 M. Warner, “‘Therefore a Man Leaves his Father and Mother and Clings to His Wife’: Marriage and Intermarriage in Genesis 2:24,” *Journal of Biblical Literature* 136 (2017): 269.

4 Warner, ‘Intermarriage,’ 279–80.



concept of clerical marriage (Article XXXII), the Opinion turns to the *Book of Common Prayer*, which together with the Articles is to be regarded as ‘the authorised standard of worship *and* doctrine in this Church’ (emphasis added). Several arguments are used to support the conclusion that whatever doctrine of marriage might be discerned in the *Book of Common Prayer*, it does not bear on the question at hand. An early argument is to point out that ‘some aspects of BCP’s rite of *Solemnization of Holy Matrimony* no longer represent the law or practice of the Church in Australia’ (para 21, emphasis original). The Opinion will later point to publishing the banns of marriage, the necessary involvement of an episcopally ordained priest, the degrees of affinity, marriage understood as a sacrament, a wife’s duty of obedience, and the expectation of indissolubility (para 86). Each of these is examined in order to show that what was once defended on the basis of scriptural principle has now been overturned both by the State and in the Church. The argument then is that this insistence upon marriage being between a man and a woman, while currently still the teaching of the Church, may prove to be yet another element that will follow the same pattern (same-sex marriage is ‘*presently* unlawful’, para 70; ‘the law has not *yet* been altered’, para 72, emphasis added). This leads to vast overreach in the conclusion:

The untidy history of the Church’s grappling with the messages of Holy Scripture as regards liturgies and laws relating to marriage should caution against declaring that *any* aspect of ‘the doctrine of marriage’ is clear beyond argument, eternally rooted in Scripture, and beyond reformation by the Church in light of deeper understanding of the teachings of Jesus Christ and of Holy Scripture. (para 126, emphasis added)

It is extraordinary that the understanding of marriage as between a man and a woman should be relegated to an aspect of marriage and put alongside the reading of the banns and the requirement for an episcopally ordained priest to preside at the solemnisation. It is also extraordinary that no acknowledgment is made that the arguments about marriage as a sacrament and the indissolubility of marriage, just to take two of the other issues listed, are not simple or straightforward.<sup>5</sup> Interestingly, the Opinion cites the conclusion of a short historical piece by Dr Mark Earngey that ‘while aspects of Christian marriage have changed throughout history, the substance of the doctrine of marriage as a union between one man and one woman does not change’ (para 187), one might add across every Christian tradition and two thousand years. However, the Opinion concludes that ‘to show that the Church’s teaching/doctrine [!!] about heterosexual, monogamous marriage has been ancient and durable ... does not turn the selected aspect of the doctrine of marriage into “the Christian Faith as professed ... and in particular as set forth in” the Creeds’ (para 192). Once again, the argument returns to narrow definitions of what is ‘the Christian Faith’ and what is ‘the doctrine of the church’. That the heterosexual element of marriage as envisaged in Scripture and the Anglican formularies is not simply one amongst many aspects of the doctrine and practice of the Church, should be beyond doubt given the words of Jesus in

5 The discussion of marriage as a sacrament depends very largely on what is meant by sacrament. Is it a sacrament in the sense that the Roman Catholic Church speaks of sacraments? Or is all that is meant is that the marriage of a man and a woman reflects the union of Christ and the church (Eph 5)? When it comes to questions of divorce and remarriage, there are a range of views, and defences of indissolubility are still produced by Anglican authors.

Matthew 19. Furthermore, it has been constant throughout human history despite repeated periods of massive social and institutional change (i.e. ours is not the first period to undergo cultural, social and moral upheaval).

The three purposes of marriage in the *Book of Common Prayer* are referenced by the Opinion (para 229):

1. 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;
2. for a remedy against sin, and to avoid fornication; that such persons as have not the gift of continency might marry, and keep themselves undefiled members of Christ's body;
3. for the mutual society, help, and comfort, that the one ought to have of the other, both in prosperity and adversity.<sup>6</sup>

Aware of the potential for offence, the Opinion nevertheless suggests 'same-sex marriages that are recognised and protected under Australian law are arguably capable of meeting the three BCP desiderata and the scriptural teachings on which they are based' (para 231). An obvious question arises with regard to the first purpose of marriage, the procreation of children. This is answered in the Opinion by an appeal to 'access to artificial conception' (para 247). However, there is a sleight of hand here. By its very nature a same-sex marriage cannot procreate without intervention from outside the marriage. Children are not a natural consequence of such a couple's sexual union. On the other hand, while some heterosexual marriages, troubled with infertility, might seek *in extremis* to access reproductive technology, procreation is in principle a natural consequence of a heterosexual sexual union.

A similar sleight of hand occurs with the observation that there is a 'very real possibility that some marriages will not involve sexual intimacy that infringes the Biblical proscription(s) relied upon' (para 27). Examples are cited where, for a variety of reasons, such as illness or infirmity associated with age, sexual intimacy might no longer be a feature of a heterosexual marriage. The issue is that marriage opens up the opportunity for sexual intimacy, which is perhaps the chief area where marriage goes beyond a simple (though profound) friendship. The blessing envisaged in the Wangaratta service is not just a blessing of friendship or companionship. It is the blessing of a union which has open to it the opportunity of sexual expression. Given that such sexual expression comes up against the prohibitions of Scripture (themselves embodied in the *Book of Common Prayer*), it is hard to see how there can be any justification for the service.

What is ignored throughout the Opinion is the purposefully stark warning in the *BCP* service: 'For be ye well assured, that so many as are coupled together otherwise than God's Word doth allow are not joined together by God; neither is their Matrimony lawful.' With the amendment to the *Marriage Act 1961* (Cth) following the plebiscite, a gulf opened up between the law of the land and the word of God on the issue of marriage. Christians seek to be good citizens who, as far as the word of God allows, uphold the law of the land. Yet when such a gulf does open up there should be no question about where the Christian stands. God's word is good because God, the one who has given it to us, is good. His gift of

6 The form of the words here is taken directly from the 1662 *Book of Common Prayer* itself. The Opinion uses a modern form of the words as printed in the (AAPB's) First Form of the Service of Marriage.

marriage is good, notwithstanding the way we in our sinfulness distort or devalue it. The law of the land might be a result of the will of the majority. The word of God is the result of the benevolent sovereign care of our Creator and Redeemer.

## Conclusion: method of argument

Much more could be said about the theological dimensions of the Majority Opinion. As has been noted elsewhere, it bears all the marks of a preconceived conclusion in search of an argument. When in the course of that search issues of theology are touched upon or briefly pursued, the result is almost invariably deeply disappointing. An unjustifiable reduction of the scope of doctrine, misreadings of Scripture which impose a controlling context other than that found right there in the text (not to mention an unconvincing setting aside of key biblical texts as ‘contested’ or ‘insufficient’), a misunderstanding of sin and grace which minimises the biblical call to repentance (a critical element in the gospel taken to the nations according to Luke 24:47), and multiple instances of confusion when it comes to the doctrine of marriage taught in Scripture and embodied in the *Book of Common Prayer* – all of this, sadly, undermines confidence in the Majority Opinion.

So too does the way the argument is pursued. Occasionally sources are quoted simply to be ignored and sometimes they are misquoted. Most notorious is the insertion of the word *non* into the legislative drafting axiom *expressio unius non est exclusio alterius* (para 247). The context is ‘the essentiality of the sexual differentiation’ in Matthew 19 and Genesis 2. The effect of modifying the axiom is to make it say the very opposite of what is usually understood by it: ‘the express inclusion of one or more things of a particular type necessarily implies an intention to exclude others of that type’.<sup>7</sup> Time and again diversity of opinion is taken as evidence that the meaning of the biblical text is uncertain, without judiciously weighing each suggestion against the words of the text read in their own canonical context. Adjectives such as ‘untidy’ (para 126), ‘vexed’ (para 121) and ‘extreme’ (para 83) colour the readers’ perception of those who maintain what has been the teaching of the Church on these matters for two thousand years. At various points the biblical teaching on this subject is placed alongside ‘widely condemned practices of the past’, such as slavery, the limitation of the franchise, the prohibition of usury, capital and corporal punishment, and sexual abuse within marriage (para 31). The rhetorical purposes of such associations should be clear.

The Appellate Tribunal Majority Opinion may not be intended as a piece of considered theological reasoning but a legal opinion. It will be for other chapters in this book to evaluate the legal argument. However, on theological grounds alone it is deeply inadequate.

7 <https://www.iclr.co.uk/knowledge/glossary/expressio-unius-exclusio-alterius/>

# Theology and the Minority Opinion of Ms Gillian Davidson

MARK EARNGEY

*Our whole doctrine wherein we consented touching fasting, prayer, and marriage etc. is plainly and fully set forth in the books of common prayer, the homilies, the catechisms, and the articles whereupon the whole realm concluded ... Our doctrine was not kept so secret but that it was not only preached but also printed, and so printed that it has the testimony of the whole realm.*

Bishop John Ponet, *An Apology*, 1556

## Introduction

During the English Reformation the doctrine of marriage was the subject of serious debate throughout the pulpits, printing presses, and also the papers of that important body of ecclesiastical material known as canon law. Nearly five hundred years later, the doctrine of marriage is the subject of debate in similar ways within the Anglican Church of Australia (ACA). This is exemplified most clearly in the recent opinions of the ACA Appellate Tribunal (AT), and it must be said, considering the personal and pastoral ramifications of the debates in England then and in Australia now, also most painfully.

Whereas, elsewhere in this volume, Mark Thompson has carefully called attention to the serious shortcomings of the theology espoused by the Majority Opinion of the AT, the purpose of the following chapter is to examine the Minority Opinion of the AT. This dissenting opinion, provided by the respected lawyer Ms Gillian Davidson, argues that the proposed Wangaratta Regulations are invalid due to their being inconsistent with both the Fundamental Declarations and the Ruling Principles of the Constitution of the ACA, and

due to their being not validly made under the ACA *Canon Concerning Services* 1992.<sup>1</sup> Alex Milner has demonstrated the legal strength of Ms Davidson's dissenting opinion, therefore we will proceed to examine and evaluate the theological basis of the said opinion.

While the Majority Opinion appears at times reticent to rule on controverted theological matters,<sup>2</sup> the Minority Opinion seems to have a clearer sense of the relationship between theology proper and the discipline of canon law. Citing Norman Doe's important *Canon Law in the Anglican Communion: A Worldwide Perspective* (1998), the Minority Opinion affirms the first three principles of law, among which includes the vital sub-principle: 'Law should reflect the revealed will of God.' Ms Davidson's reliance upon this axiom goes some distance to explain the thoughtful theological engagement throughout her Opinion. Indeed, this methodological approach keeps her in the company of Norman Doe, but also of the thirty-two-member committee of talented theologians and lawyers who drafted the *Reformatio Legum Ecclesiasticarum* during the English Reformation (c. 1552). While never enacted due to the political circumstances on the eve of Edward VI's death, the opening premise of this nevertheless significant reform of canon law, rightly observed:

*Since the power to rule and the right to administer laws has come to us from God, we ought to learn about him first. For once his nature is rightly and properly understood, the meaning of the other laws which we have taken care to be applied to the confirmation of the true worship of God in our kingdom, and to preserving the godly same state of the church, will be easier.*<sup>3</sup>

Thus, due to the theological nature of the legal argument of the Minority Opinion, we will proceed our examination under the following headings: the Christian Faith, the Holy Scriptures, the Estate of Holy Matrimony, and the Church.

## The Christian Faith

The Minority Opinion sets forth a broad understanding of the Christian Faith (paras 60–69). It does so because of the relationship between 'the faith', 'doctrine', and 'faith'. The term 'the faith' is parsed as the whole counsel of God, professed by the Church since primitive times and in particular set forth in the Apostles', Nicene, and Athanasian Creeds. Such a description is based upon the appeal of Jude 3 to 'contend for the faith that was once for all delivered to the saints'. We might add to this the practice of Paul, who with Barnabas encouraged the saints to 'continue in the faith' (Acts 14:17), and through whose ministry with Timothy 'the churches were strengthened in the faith' (Acts 16:1). Indeed, it was Paul's desire to see the saints 'all attain to the unity of the faith' (Eph 4:12).

The term 'doctrine' is understood synonymously with 'teaching' in the Minority Opinion (e.g., para 62) and often refers to the substance of 'the faith'. We might say that 'the

1 Where 'Regulations' refers to the *Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019* (Diocese of Wangaratta) which purports to be made under the ACA *Canon Concerning Services* 1992.

2 E.g., see Majority Opinion paras 214, 228.

3 Gerald Bray, *Tudor Church Reform: The Henrician Canons of 1535 and the Reformatio Legum Ecclesiasticarum* (Woodbridge, Suffolk: Boydell Press, 2000), 171.



faith' is comprised of many essential 'doctrines' such as the doctrine of the Trinity, or the doctrine of the Incarnation, or the doctrine of the Resurrection. Yet because 'doctrine' may simply be understood as 'teaching' there are also doctrines which are drawn from Scripture and developed over time but are nevertheless non-essential to the faith. Doctrine concerning the wearing of tattoos or Christian sportsmanship might suffice for examples. This broad conception of 'doctrine' is utilised in the Minority Opinion in the same way that it is used by the apostle Paul, who desires the saints to reach unity of the faith so that we will not be 'carried about by every wind of doctrine' (Eph 4:13–14).

The Minority Opinion rightly sees the term 'faith' as implying an obligation to uphold and obey the essential doctrinal elements of 'the faith' (paras 66–69). The apostle Paul sometimes refers to such a dynamic as the 'obedience of faith' (Rom 1:5; 16:26). Another way the Bible speaks about 'faith' is by the comparison of dead faith with true and living faith. The Scriptures teach that 'faith by itself, if it does not have works, is dead' (Jas 2:17). We might say that salvation is by faith alone in Jesus Christ, but faith is never alone, for it always issues forth in good works (Eph 2:10). This biblical understanding of faith is articulated clearly in Archbishop Cranmer's Homily on Faith: '... by all the declarations of St. Paul, it is evident, that the true, lively, and Christian faith, is no dead, vain, or unfruitful thing, but a thing of perfect virtue, of wonderful operation and strength, bringing forth all good motions, and good works.'<sup>4</sup>

The three terms discussed above are used in basically the same way in the *Reformatio Legum Ecclesiasticarum*. The opening sixteen sections are introduced as 'The Christian Faith'. They include the doctrines of the Trinity, the Person and Work of Christ, the Resurrection, the Scriptures, and discussion of the Authority of the Creeds, Councils, and Fathers. These doctrines (or sometimes 'articles') are requirements of faith in that they are to be reverently obeyed. They are not an exhaustive list, for the conclusion states that 'it would take far too long, and clearly be a laborious task, to write down here all the details of what must be believed as part of the catholic faith.'<sup>5</sup>

Thus, the terminology of 'the faith', 'doctrine', and 'faith' within the Minority Opinion has solid scriptural foundation and good canonical pedigree within the Anglican tradition. Both 'the faith' and 'doctrine' are understood broadly, and 'faith' entails obligations. Indeed, the definition of these terms in the Minority Opinion unsurprisingly comports well with the Constitution of the ACA s 74(1), which says:

'Doctrine' means the teaching of this Church on any question of faith.

'Faith' includes the obligation to hold the faith.

## The Holy Scriptures

In the Preface to the Great Bible published during the reign of Henry VIII in 1539, Archbishop Cranmer declared that 'this book ... is the Word of God, the most precious jewel, the

4 Thomas Cranmer, 'A Short Declaration of the True and Lively, and Christian Faith' in *Certain Sermons, or Homilies Appointed by the King's Majesty* (London: Grafton, 1547), RSTC 13640, sig. G.iir.

5 Bray, *Tudor Church Reform*, 183.



most holy relic that remains on earth.”<sup>6</sup> While a far less jubilant occasion, the Minority Opinion reflects a similarly splendid sentiment concerning the Holy Scriptures. We are informed that the ACA Constitution ‘gives supreme authority to the canonical Holy Scriptures, describing them, both Old and New Testament, as “the ultimate rule and standard of faith, given by inspiration of God and containing all things necessary for salvation”’ (s 70). This important institutional statement concerning the status and function of Scripture is drawn from a passage in Paul’s second epistle to Timothy (2 Tim 3:14–17; para 71). Among other things, these precious verses concern the doctrine of inspiration and the authority of the Bible. It finds confessional expression in the phrase ‘God’s Word written’ and its surrounding description in Article XX of the Thirty-nine Articles (para 72), and also throughout Thomas Cranmer’s Homily on Scripture (para 73).<sup>7</sup> With commendable brevity the Minority Opinion captures some of the most important biblical, confessional and constitutional aspects of the authoritative nature of the Bible.

Due to the nature of the Holy Scriptures, the Minority Opinion also directs our attention to some important principles for reading God’s inscripturated Word. The authority of the Bible explains its pre-eminent place in Anglican liturgy and its purpose to minister salvation to its readers (paras 107–108); the clarity of the Bible means that both the literate and illiterate can benefit from its teaching (paras 109); and the unity of the Bible means that Scripture interprets Scripture: to paraphrase Article XX, no passage may be repugnant to another passage (paras 110). One implication of this latter point is that any passage of the Bible must be read in its salvation historical context. For instance, although Christ abrogates the Mosaic law in its civil and ceremonial aspects, the moral law remains in force for New Covenant believers (paras 111). The final principle of interpretation drawn out by the Minority Opinion concerns the law of love. Ms Davidson writes that this principle of love is ‘central’ to what God says to humanity in the Bible. Indeed, love is not opposed to the moral law but rather ‘gives the moral law its heart’ and enables us to see its goal (paras 112). We could paraphrase this important section on the law of love by saying that ‘love only wins through God’s wisdom.’ Thus, not only does the Minority Opinion furnish the reader with important aspects of the nature of the Bible but also important aspects of biblical interpretation and application.

While the Minority Opinion outlines the doctrine of Scripture within the framework of a legal argument, it is a reliable reflection of the teaching of Scripture itself. The pivotal verse for the doctrine of the inspiration of the Bible is 2 Timothy 3:16, which uses the Greek θεόπνευστος and is rendered ‘divinitus inspirata’ in the Latin Vulgate. This is translated by various editions of the Bible as ‘inspired by God’ (e.g., Tyndale’s NT, Geneva Bible, KJV, ASV, RSV) or ‘God-breathed’ (e.g., NIV, ESV). Either translation is legitimate since it reflects Paul’s use of the Greek word in this verse. It is important to note that this verse does not speak of the writers being inspired (though they certainly were, as 2 Pet 1:21 indicates). Rather it says that the product of the writing was inspired, viz. ‘All Scripture is θεόπνευστος’. It is upon this basis that Anglican theology speaks of the Scriptures being ‘God’s word written’ (Article XX).

6 Thomas Cranmer, ‘A Prologue or Preface’ in J. Cox (ed.), *Miscellaneous Writings and Letters of Thomas Cranmer* (1846), 122.

7 Thomas Cranmer, ‘A Fruitful Exhortation, to the Reading and Knowledge of Holy Scripture’ in *Certain Sermons*, RSTC 13640, sig. A.iv<sup>r</sup>.

One crucial corollary of this point is the authority of the Bible. Whereas the Church is the witness and keeper of holy Writ (Article XX), the supreme judge and principal source of all ecclesiastical creeds and canons is the written Word of God. Indeed, the Church may not set forth anything to be believed which cannot be found within the Bible. This is the point of Article VI of the Thirty-nine Articles. Holy Scripture ‘contains all things necessary to salvation: so that whatsoever is not read therein, nor may be proved thereby, is not to be required of any man, that it should be believed as an article of the Faith, or be thought requisite to salvation.’ Thus, the Majority Opinion distinction between ‘containing’ and ‘comprising’ is a red herring (para 162). The Bible exhaustively holds inside itself all things required for salvation. The idea that the Holy Scriptures do not exhaust ‘all things necessary to salvation’ is neither Anglican nor Protestant. That is, everything that needs to be believed in order to be saved is found in the Bible, or to come at it another way, there is nothing additional to the Bible that must be believed in order to be saved. As Archbishop Cranmer’s Homily on Salvation says, ‘whatsoever is required to [the] salvation of man, is fully contained in the scripture of God.’<sup>8</sup> It is for this reason that Cranmer’s Ordinal required assent to this vital doctrine for ordination to the priesthood and consecration as a bishop:

Be you persuaded that the Holy Scriptures contain all doctrine required of necessity for eternal salvation, through faith in Jesus Christ? And are you determined with the said Scriptures, to entrust the people committed to your charge, and to teach nothing (as required of necessity to eternal salvation) but that you shall be persuaded may be concluded, and proved by the Scripture?<sup>9</sup>

## The Estate of Holy Matrimony

The Minority Opinion provides a succinct and strong outline of the doctrine of marriage (para 141). The history of the human race began with the marriage of our first parents, Adam and Eve. This marriage between man and woman established an institution which should be honoured by all and kept pure (Heb 13:4). The expectation of marital chastity is related to the one-flesh union between husband and wife (1 Cor 6:13–20), which union symbolises the relationship between Christ and his bride, the Church (Eph 5:31–32). Further, Ms Davidson draws upon the Sydney submission to the AT which elucidates the doctrine of marriage within the *Book of Common Prayer*. Firstly, that marriage is a union between man and woman (para 144). Secondly, the purpose of marriage contemplates the possibility of children (para 145). Thirdly, the covenant of marriage is voluntary, lifelong and exclusive (para 146). Fourthly, marriage is grounded in creation and symbolises Christ and the Church (para 147). Fifthly, marriage in God’s sight supposes coupling according to God’s Word (para 148). Finally, God’s ministers only pronounce God’s blessing upon marriages according to God’s Word (para 149).

Thus, according to the Minority Opinion, the Scriptures only endorse sexual relations

8 Cranmer, ‘A Fruitful Exhortation’, A.iv<sup>r</sup>.

9 Church of England, *The Book of Common Prayer, and Administration of the Sacraments, and other Rites and Ceremonies in the Church of England* (London: Grafton, 1552), RSTC 16284.5, sig. Cc.ii<sup>r</sup>.

within the context of marriage. Conversely, sexual activity outside of marriage is condemned both in the Old and the New Testaments (para 142). The broad category of *porneia* which is used by our Lord and the apostle Paul (often translated as ‘sexual immorality’ or ‘fornication’) illustrates the prohibition on extramarital sexual activity (John 8:41; Acts 15:20; Rom 1:29). Particular categories of prohibited sexual intercourse are also named in the Minority Opinion: adultery (Matt 5), incest (1 Cor 5), bestiality (Exod 22:19) and homosexuality (1 Cor 6). Except for the final category, much of the discussion regarding prohibited sex is uncontroversial within contemporary biblical and doctrinal studies. However, the impurity and immorality of homosexual sex has been contested in recent times, and this dispute is the driver for the Appellate Tribunal Reference.

Does unrepentant homosexual sexual activity have serious soteriological (or salvation related) implications? There are various biblical passages which bear upon the subject, but the main textual flashpoint is the apostle Paul’s statement that ‘neither the sexually immoral, nor idolaters, nor adulterers, nor men who practise homosexuality ... will enter the kingdom of God.’ (1 Cor 6:9–10). In addition to mounting the biblical case that sexual relations outside of marriage are prohibited by Scripture, the Minority Opinion enlists the support of eminent historian Diarmaid MacCulloch and renowned New Testament expert William Loader and answers in the affirmative (paras 81–83). This affirmation finds further support in the careful exegetical comments by Mark Thompson in his chapter in this present volume.

However, the Majority Opinion answers ambiguously, stating on the one hand that the passage in 1 Corinthians has soteriological implications, and on the other hand that the passage is about ‘the necessity for Christ’s saving grace’ (para 214). What is given with one hand is taken away by the other, for the soteriological implications of the passage require *repentance of homosexual practice (and other sins)* in order to receive Christ’s saving grace. That is, the passage is not simply about inheriting the kingdom of God but also repenting from various practices which preclude one from inheriting this glorious kingdom. Even the recent Church of England *Living in Love and Faith* resource articulated this point rather well: ‘It is the spiritual attitude of moving away from God rather than seeking God that is at stake.’<sup>10</sup> And lest it be thought that the need to both repent and believe for salvation is the preserve only of the apostle Paul, then let us recall the heartbeat of the ministry of our Lord Jesus Christ: ‘The kingdom of God is near. Repent and believe the good news!’ (Mark 1:15).

Therefore, the estate of holy matrimony as articulated in the Minority Opinion stands upon good biblical and theological foundations. The implications of this doctrine of marriage for the present discussion of homosexual sex and marriage are significant, and for many, mixed with real pain and emotion. Yet the serious soteriological implications are well articulated in this Minority Opinion. The warning associated with inheriting the kingdom of God that we read in 1 Corinthians 6 is hardly compatible with the petition in the Wangaratta liturgy to ‘bring them to the joy of your heavenly kingdom’ when applied to same-sex couples. Keeping the marriage bed pure has crucial consequences for our eternal destiny and the coming consummation of all things.

<sup>10</sup> House of Bishops of the General Synod of the Church of England, *Living in Faith and Love: Christian Teaching and Learning about Identity, Sexuality, Relationships and Marriage* (London: Church House Publishing, 2020), 306. Use of this supporting quote does not imply agreement with the entire report.

## The Church

The last theological topic to be examined in the Minority Opinion is the Church of God. Ecclesiastical unity forms an important part of the argument in the Minority Opinion. Ms Davidson states that ‘a proper construction of the Constitution does not support a “two churches within the Church” view’ (para 170). This does not preclude diversity within the national Church, but it does imply that the national Church – and especially its doctrine and worship – ought to be ordered, indeed regulated, for ecclesiastical unity (paras 163–174). Just as the apostle Paul exhorted the Corinthian church that ‘everything should be done in a fitting and orderly way’ (1 Cor 14:40), the discussion of the Wangaratta liturgy is rightly set within the context of the good ordering of the Anglican Church of Australia.

For the Minority Opinion, the unity of the national Church is to be sought by guarding against error (para 41) and loving one another (para 42). While these are basic Christian activities, they are especially important for overseers of the flock of Christ (e.g., Titus 1:7–9). ‘Not many of you should presume to be teachers, my brothers,’ warns the Apostle James, ‘because you know that we who teach will be judged more strictly’ (Jas 3:1). Thus, it is especially incumbent upon the clergy of the Church to ‘teach what is in accord with sound doctrine’ and set those who are taught ‘an example by doing good’ (Titus 2:1,7). ‘Things that cause people to stumble are bound to come,’ the Lord Jesus warns, ‘but woe to anyone through whom they come. It would be better for them to be thrown into the sea with a millstone tied around their neck’ (Luke 17:1). In other words, caution is advised for the care of God’s people. It is for this reason that the Minority Opinion cites Article XXXIV, which not only requires scripturally compatible ceremonies but rebukes those who break away from such scriptural ceremonies (‘and woundeth the consciences of the weak brethren’). When it comes to eternal affairs we need to handle with care, and this is especially important in our liturgical practices.

This is perhaps one of the most important theological arguments within the Minority Opinion. The introduction of practices which will divide the national Church over fundamental doctrine endangers our unity, especially in terms of our gospel witness to the watching world (para 172). We will have two gospels, two churches, and two destinies. Ms Davidson accurately argues that pursuit of these liturgical practices is not for the good order of the Church. Indeed, the theology that undergirds the argument concerning the Church has definite pastoral implications for the present controversy: a house divided against itself cannot stand.

## Conclusion

With measured tone, the Minority Opinion sets forth a clear and cogent argument rejecting the validity of the Wangaratta Regulations. It does so on strong theological grounds, which involve the Christian Faith, the Holy Scriptures, the Holy Estate of Matrimony, and the Church of God. Its theological grounding is consistent with the foundational documents of the Anglican Church published at the establishment of the Church of England in the time of the Reformation and the Anglican Church of Australia in more recent times. Though it is formally a rejection of the Wangaratta Regulations, it is much more than that. It positively articulates vital aspects of the Christian Faith; it upholds the soteriological significance of

God's Word written; it celebrates the purity of chaste marriage as only between one man and one woman; and it pleads for unity and good order of our national Church. It is a legal opinion that rests upon the gospel of our Lord Jesus Christ and glorifies our great God. Therefore, the Minority Opinion of the Appellate Tribunal deserves majority acceptance within the Anglican Church of Australia.



# The reports of the Board of Assessors and the House of Bishops

## *A commentary*

LIONEL WINDSOR

### Introduction

**O**n 10 June 2020, the Appellate Tribunal of the Anglican Church of Australia invited the General Synod's elected Board of Assessors and the House of Bishops to express their opinions on four questions. The Board of Assessors' response of 2 September 2020 to these four questions is reproduced in Appendix ii of this volume. Being a member of the Board, I am writing here to provide my own commentary on the Assessors' unanimous report (which was in substantial agreement with that of the House of Bishops) and on its reception by the Appellate Tribunal.

The Appellate Tribunal asked these questions of the Board of Assessors and the House of Bishops because it was considering references made by the Primate concerning the Diocese of Wangaratta's Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019 (hereafter the Regulations).<sup>1</sup> The References questioned the canonical and constitutional validity of the Regulations' blessing service, particularly in relation to its intended use to bless 'a civil marriage which involved a union other than between one man and one woman'. The *Canon Concerning Services* 1992 provides that 'all forms of service used ... must not be contrary to or a departure from the doctrine of this Church' (s 5(3)). A key issue was, therefore, whether the use of the proposed service to bless a marriage other than between a man and a woman was consistent with the 'doctrine of this Church' as it is understood in the Constitution of the Anglican Church of Australia, especially the Fundamental Declarations (ss 1–3) and Ruling Principles (ss 4–6).

On 11 November 2020, the Appellate Tribunal, after receiving the reports of the Board of Assessors and House of Bishops, issued two contrasting Opinions: a Determination and

<sup>1</sup> Relevant documentation can be found at the Anglican Church of Australia website: <https://anglican.org.au/governance/tribunals/appellate-tribunal-current-matters/appellate-tribunal-reference1/>



Opinion by the majority of the Tribunal (hereafter the Majority Opinion), and a Dissenting Opinion by Ms Gillian Davidson (hereafter the Minority Opinion). It is clear that the Appellate Tribunal was deeply divided on key matters, including some involving doctrine (see e.g. Majority Opinion para 288). In such cases, the Constitution provides a means for advising the Appellate Tribunal as they seek to reach a decision:

the Appellate Tribunal shall in any matter involving doctrine upon which the members are not unanimous upon the point of doctrine and may, if it thinks fit, in any other matter, obtain the opinion of the House of Bishops, and a board of assessors consisting of priests appointed by or under canon of General Synod (Constitution s 58(1)).<sup>2</sup>

Thus, the Board of Assessors and the House of Bishops are key voices of the General Synod to the Appellate Tribunal on disputed matters involving doctrine. Justice Bleby notes in his 1997 report:

the Constitution affords a special place and standing to the opinion of the House of Bishops and of the Board of Assessors which is not afforded to other representations ... It follows that in my opinion the Tribunal should be very slow to depart from the advice it receives from the House of Bishops and Board of Assessors, particularly when that advice is unanimous or substantially so. It should only depart from that advice if it is plainly wrong or contains an obviously flawed process of reasoning.<sup>3</sup>

In this case, the advice from both the General Synod's elected Board of Assessors and the House of Bishops were indeed unanimous and in substantial agreement. Thus, notwithstanding the existence of a variety of views in the submissions and in the wider Church,<sup>4</sup> the Tribunal should be expected to especially heed this unanimous advice.<sup>5</sup>

**I warmly commend the entire Board, and am grateful for the significant efforts and leadership...**

The Board of Assessors was elected by the General Synod at its 17th Session (2017). Its members, drawn from several dioceses, are all ordained priests holding a doctorate, with research specialisations spanning the fields of doctrine, church history, biblical studies, ministry, medicine, and bioethics. There is a clear commonality of opinion evident in the Board of Assessors' report of 2 September 2020. I warmly commend the entire Board, and am grateful for the significant efforts and leadership shown especially by members of the Board from dioceses outside my own. Nevertheless, in writing this commentary, I am not acting as a representative of the Board of Assessors or with its official endorsement. What follows is my own analysis of the relevant documentation, informed by my own understanding of the common mind of the Board of Assessors as we provided our report.

2 The relevant canon of General Synod is the *Board of Assessors (Appellate Tribunal) Canon 1962*.

3 *Reference as to Deacons and Lay Persons Celebrating the Holy Communion* (1997) Appellate Tribunal 36–37 (Justice Bleby), cited in Minority Opinion para 203.

4 The Majority Opinion frequently cites such a variety of views in the submissions and the wider Church as a reason *not* to form an opinion on exegetical and interpretative issues, e.g. paras 28, 193, 202, 228, 231–9, 248.

5 So the Minority Opinion paras 86–7, 113, 205–6.

## The nature of the questions and the process the Assessors followed

The questions were varied, but also quite specific. The Tribunal did not ask the Assessors *directly* about key matters involving the doctrines that turned out to be a major point of difference between the Tribunal's Opinions. That is, the Tribunal did not ask directly about the Church's doctrine of (or in relation to) marriage. Nor did the Tribunal ask directly about the meaning of the term 'doctrine' in the Constitution. Nevertheless, it is clear that the questions the Tribunal asked were, at various levels of directness, relevant to these doctrines about which the Tribunal ended up divided. Furthermore, while there are obviously many complex pastoral issues raised by the recent legal redefinition of marriage in Australia, the Tribunal only asked the Assessors and Bishops to comment on one quite specific pastoral issue in this regard (i.e., Question 4 on the baptism of children of a same-sex couple). The Assessors' general approach was, therefore, to answer only the questions we were asked, but to keep in mind how our answers might bear upon broader doctrinal (and, where appropriate, pastoral) issues.

**That is, the Tribunal did not ask directly about the Church's doctrine of (or in relation to) marriage.**

Since the members of the Board of Assessors were separated from one another due to COVID-19 border closures (for example, the border between Victoria and New South Wales), we held several online meetings. During and between these meetings, we prepared drafts and provided comments on those drafts, to achieve increasing clarity of expression and eventually to arrive at the final form of a response to the Appellate Tribunal's questions. The Tribunal requested us to keep the process confidential until the public record of their deliberations had been made available, which has now occurred. The House of Bishops also provided a single 'agreed response to the questions asked' (Bishops' report, Introduction). While obviously independent, the Bishops' report was also unanimous, and substantially in agreement with that of the Assessors. I will not comment in detail on the Bishops' report, but I will refer to it on occasion to demonstrate its consistency with the Assessors' report.

As I have noted, the Tribunal's deliberations resulted in two substantially divergent Opinions. The Majority Opinion concludes that: 'Wangaratta Diocese's proposed service for the blessing of persons married in accordance with the Marriage Act does not entail the solemnisation of marriage; is authorised by the *Canon Concerning Services 1992*; and is not inconsistent with the Fundamental Declarations and Ruling Principles of the Constitution of the Church.' The Minority Opinion, in stark contrast, concludes that: 'The Regulations are inconsistent with the Fundamental Declarations' and 'Ruling Principles', and 'are not validly made under the *Canon Concerning Services 1992*' (para 27). It is clear from the Opinions that the Tribunal considered a great deal of material, and presumably they debated the doctrinal issues at some length.

This is not the place to comment on every aspect of these Opinions; rather, I am here commenting specifically on the matter of how the Assessors' report was received by the Tribunal. *In essence, the Majority Opinion engaged inadequately with the Assessors' report.*<sup>6</sup> While there were some areas of agreement, much of what the Assessors wrote appeared not to have been fully comprehended, and thus was misconstrued; some elements of the report

6 Notwithstanding the objection in Majority Opinion para 290.

were not engaged with at all; and other elements were rhetorically marginalised. By contrast, the Minority Opinion evidenced substantial engagement with the Assessors' report, both straightforwardly understanding and accepting its advice.

I will now comment on each of the questions the Tribunal asked, the Assessors' answers to those questions (along with that of the Bishops), and the reception of the Assessors' answers in the Tribunal's Majority and Minority Opinions.

## Question 1: The meaning and scope of 'the Faith'

The first question the Tribunal posed to the Assessors concerned the meaning and scope of the Church's 'Faith':

One of the many issues in the Reference is the meaning and scope of the words 'the Christian Faith as professed by the Church of Christ from primitive times and in particular set forth in the creeds known as the Nicene Creed and the Apostles' Creed'. Which of the Thirty-Nine Articles and which (if any) part of any other document (including Holy Scripture) contains statements relevant to the Wangaratta references about the faith of the Anglican Church of Australia and what are they?

### The Assessors' response

At first glance, this may seem to be a slightly off-target question, since neither of the two References contain any explicit reference to 'faith' in their wording. Nevertheless, the References do cite the Fundamental Declarations of the Constitution, which contains the quoted phrase about 'the Christian Faith...' (s 1) along with other references to 'faith' (e.g. the Scriptures are the 'ultimate rule and standard of faith', s 2). Furthermore, the References are concerned with the consistency of the Wangaratta blessing service with 'doctrine', which is also a key term in the Fundamental Declarations and Ruling Principles of the Constitution (ss 3 and 4; cf. the glossary s 74(1),(4)). Hence, in answering this question, the Assessors sought to confirm the connection between 'doctrine' (i.e. the key term used in the References) and 'faith' (i.e. the key term in the Tribunal's question) by first noting that 'the Faith' is used in the Constitution as 'a body of belief with recognisable shape' (Assessors' report para 1(b)).

In their report, the Assessors argued that the content of 'the Christian Faith' which is held by the Anglican Church of Australia, precedes and is broader than the Creeds (though it encompasses them as fundamental statements). The Bishops made the same point (Bishops' report para 1(7)). We also argued that a significant element of 'the Faith' of the Church involves matters relating to holiness and obedience, which can be discerned in the principles the Church has followed historically in exercising discipline. Thus:

In summary, when speaking of the Faith of the Anglican Church, we insist that this includes matters of obedience as well as doctrine. This has been demonstrated in writings of the patristic era, debates in the Reformation era expressed through the Articles, the Book of Common Prayer, and the Homilies, twentieth century usages, all of which build on the Scriptural texts cited above. (Assessors' report para 1(m))

Note that in this context, the statement is not intended to make any kind of sharp *distinction* between ‘obedience’ and ‘doctrine’; rather, it is summarising the preceding argument that there is a close *connection* between obedience and doctrine in the Faith of the Church throughout history.

### The reception of the response in the Tribunal’s Majority Opinion

While the Majority Opinion noted some basic points of agreement with the Assessors’ report—namely that ‘the Faith’ is broader than the Creeds (para 215), that the Creeds imply a requirement for holiness (albeit, in their view, contextually determined) (paras 216, 217), and that belief/‘faith’ (in a general sense) entails obedient behaviour (para 218)—it misconstrued and thereby summarily dismissed the nature of the Assessors’ argument, i.e. that the ‘the Faith’ of the Church includes matters of obedience.

The Majority Opinion’s misconstrual of the Assessors’ answer at this point appears to be linked to the Majority Opinion’s very strong focus on a ‘restricted constitutional definition’ of ‘doctrine’ (para 145). The Majority Opinion argued that the term ‘doctrine’ is to be understood primarily from the use of the term in the glossary of the Constitution (s 74(1)). In this constitutional sense, the Majority Opinion argues, ‘doctrine’ is restricted to a ‘teaching of **this Church** on any **question of faith**’ (para 130 (emphasis original)). Furthermore, on the basis of an interpretation of s 2 of the Constitution, the Majority Opinion restricts the definition to any matter that ‘directly involve[s] matters necessary for salvation’ (para 178). ‘Doctrine’ is thus, in their view, quite separate from matters of ‘discipline’, i.e. ‘the rules of order and conduct’ in the church such as those considered previously in issues surrounding the ordination of women (para 149).

In commenting on the Assessors’ report (paras 221–5), the Majority Opinion emphasised this sharp distinction of theirs between ‘discipline’ and ‘doctrine’ (e.g. para 223), to the extent that they misconstrued the purpose of our references to historical instances of church discipline. The Assessors cited these instances of discipline as evidence for our primary point, i.e. that ‘the Faith’ of the Church is clearly concerned with matters of obedience. In particular, we emphasised the seriousness of unrepentant sin, especially sexual immorality (including homosexual activity), and pointed out that this can explicitly be described as a matter concerned with salvation (e.g. Article XVI). The Tribunal, however, wrongly assumed that the Assessors were fallaciously ‘treat[ing] every disciplinary or liturgical activity of the Church as part of the Faith of the Church’ (para 223). The Majority Opinion thus dismissed the Assessors’ answer on the basis of this (perceived) lack of conformity to its view of ‘discipline’. However, in doing so, they failed to engage with the primary substance of the report, i.e. that ‘the Faith’ includes matters of obedience, especially in relation to sexual practice.

**The Majority Opinion thus dismissed the Assessors’ answer on the basis of this (perceived) lack of conformity to its view of ‘discipline’.**

### The reception of the response in the Tribunal’s Minority Opinion

The Minority Opinion, on the other hand, had no difficulty in construing the key thrust of the Assessors’ answer about ‘the Faith’ of the Church—i.e. that it includes matters of obedience—and accepted the answer as consistent with the historical data (paras 67–9). The Minority Opinion further argued that the proposition ‘that marriage is only between a man

and a woman' (para 150) is a 'principle of doctrine' in this Church in many senses, including being 'taught by the Church about the faith' and 'part of the Christian faith professed by the Church' (para 151). The Minority Opinion therefore concluded that 'the Regulations are inconsistent with [this] principle of doctrine contained in the BCP [*Book of Common Prayer*] and are therefore invalid' (para 153).

### Question 2: The Scriptures and the meaning of 'necessary to salvation'

The second question the Tribunal posed to the Assessors concerned Article VI, 'Of the Sufficiency of the holy Scriptures for salvation'. The relevant section of the Article is:

Holy Scripture containeth all things necessary to salvation: so that whatsoever is not read therein, nor may be proved thereby, is not to be required of any man, that it should be believed as an article of the Faith, or be thought requisite or necessary to salvation. (Article VI)

The wording and import of this Article is echoed in the Fundamental Declarations:

This Church receives all the canonical scriptures of the Old and New Testaments as being the ultimate rule and standard of faith given by inspiration of God and containing all things necessary for salvation. (Constitution s 2).

The Tribunal's question to the Assessors consisted of two parts: firstly, a request for references to publications that discuss Article VI; secondly, a question relating to the key phrase from the Article, 'containeth all things necessary to salvation':

Can you please refer the Tribunal to two or three respected, published, available works or articles discussing the history and scope of Article VI? In that Article, what is meant by the words 'containeth all things necessary to salvation'?

### The Assessors' response

On the matter of the request for references to publications, the Assessors provided four such references (O'Donovan, Bray, Null, and Foord). I note that the Bishops provided eleven references, including the four that the Assessors provided.

On the matter of the meaning of the phrase from the Article, the Assessors' summary answer was as follows:

In summary, the phrase 'containeth all things necessary to salvation' means that the Holy Scriptures have authority, convey power, and are sufficient to lead us to faith in Christ, they judge all teaching and behaviour which might endanger our obedience to Christ, and they provide assurance of the right path towards eternal life in Christ. (Assessors' report para 2(g))

The Bishops made similar points:

The purpose of the Article is not to determine that some matters taught by Scripture are not essential to an individual's justification, sanctification and glorification through Jesus Christ. Rather its purpose is to set out that only what is



found in or can be proved by Scripture is necessary to salvation. (Bishops' report para 2(2))

The Assessors emphasised that the Article's affirmation of the sufficiency of Scripture necessarily entails a view of Scripture's authority such that 'all things necessary to salvation' includes matters of behaviour and obedience.<sup>7</sup> For example, we noted that

The English Reformers were at one with the early church leader Athanasius in reinforcing the point that moral living is an entailment of salvation (Assessors' report para 2(c)).

The Assessors also argued (para 2(d)) that Article VI leads directly to Article VII, in which 'everlasting life' is connected to 'the obedience of the Commandments which are called Moral'.

### The reception of the response in the Tribunal's Majority Opinion

On the matter of the request for references to publications, the Majority Opinion did not explicitly cite any of the publications the Assessors referred them to. If the Tribunal members did in fact read the publications they had requested, the Majority Opinion did not appear to be persuaded by the arguments contained in them.

On the matter of the meaning of the phrase 'containeth all things necessary to salvation', the Majority Opinion (para 198) argued that the phrase must be understood primarily in light of 'the Church's doctrine of salvation.' They highlighted especially the teaching that salvation is found only in the name of Jesus Christ, and that justification is through faith in Christ not works, as seen in other Articles (XI, XVIII).

This is, of course, undeniable (the Assessors certainly do not deny it!). However, by themselves, these statements do not settle the issue at hand. That is, the issue is not the Christological basis of salvation and justification through faith (which is not in dispute), but rather how *repentance and works* are to be understood *in relation to salvation* (and justification) in Christ. On this issue, the Majority Opinion is rather opaque. Although the authors claim they do not want 'to deny the scriptural teachings about repentance or the importance of faith being consistent with good works' (para 198), they do not clearly define what those teachings are, nor what 'importance' they entail in relation to salvation. They simply say the 'onus of persuasion' is upon those who contend that 'gospel issues' are at stake in the Wangaratta blessing service. It appears from this that either they do not regard repentance and good works as a gospel/salvation issue, or they do not regard repentance and good works as relevant to the Wangaratta blessing service (see also Q3 below).

To clarify our own answer: the Assessors argued in answer to this question and elsewhere (see further below on Q3) that the teaching of the Church is that unrepentant persistence in sin—particularly here, sexual immorality, which has been unambiguously understood in the history of the Church to include same-sex sexual activity—endangers salvation. Thus, it

7 Cf. the use of the term 'necessarily' in Article XII Of Good Works: 'Albeit that Good Works, which are the fruits of Faith, and follow after Justification, cannot put away our sins, and endure the severity of God's Judgement; yet are they pleasing and acceptable to God in Christ, and do spring out necessarily of a true and lively Faith; insomuch that by them a lively Faith may be as evidently known as a tree discerned by the fruit.'



cannot be blessed, which is what the Wangaratta service purports to do (see also below). Obviously, the Assessors' argument was not persuasive to the authors of the Majority Opinion. However, the authors of the Majority Opinion did not provide any detail about why it was not persuasive to them. At one point they stated that the teachings in the Articles about grace and salvation render at least 'some of the more extreme claims' in this regard as 'hard to understand' (para 83), but they did not elaborate on which particular claims they regard as 'extreme', nor what makes them extreme, nor why they find them hard to comprehend in light of the Articles' teaching on grace and salvation.

### The reception of the response in the Tribunal's Minority Opinion

On the matter of the request for references to publications, the Minority Opinion was generally consistent with the works the Assessors referred to the Tribunal, although it did not cite these works directly.

On the matter of the meaning of the phrase 'containeth all things necessary to salvation', the Minority Opinion accepted the Assessors' answer. Furthermore, the Minority Opinion included a particularly elucidating exposition of 2 Timothy 3:14–17, which is also a passage that forms a key basis for Article VI (paras 70–4). The Minority Opinion also confirmed the plenary, rather than the restricted, nature of scriptural authority, power and sufficiency, as well as its clarity and unity (paras 107–12).

The Minority Opinion was far clearer than the Majority Opinion in its description of the Church's teaching concerning the connection between justification, salvation and unrepentant persistence in sin. That is, it noted helpfully that "salvation" as used in Section 2 of the Constitution, should not be conflated with "justification by grace through faith" so as to exclude the whole teaching of the Bible on human behaviour', citing both the Homily on Salvation, and James 2:14–19 (para 75).

## Question 3: Persistence in sexual immorality precluding salvation

The third question the Tribunal posed to the Assessors was more specifically concerned with whether *persistence in sexual immorality* precludes a person from salvation. The question was in three related parts:

Does the Anglican Church of Australia have a teaching on whether persistence in sexual immorality precludes a person from salvation in Christ Jesus? Where is this teaching set out? In this context, is sexual immorality different from other forms of sinfulness?

### The Assessors' response

The Assessors' response was as follows:

In summary, the Anglican Church of Australia does teach (a) that persistence in sexual immorality precludes a person from salvation in Christ Jesus, (b) that such an ethical expectation is found in its prayer books, articles of religion, books of

homilies, and preeminently in Scripture, and (c) that while sexual immorality is listed alongside other sins yet by its public nature affords disgrace to the church in ways that other sins may not. (Assessors' report para 3(q))

The Assessors' argument for this conclusion began with the teaching of Scripture, which we noted is unambiguous on this issue (e.g. 1 Cor 6:9–11, 13–19). We then demonstrated that 'The teachings of the church, in many documents or formularies, explicitly follow Holy Scripture on this point' (para 3(a)). We provided many examples of such teachings, including the confession/absolution in our services of public worship, Article XXIX, the Exhortation in the *BCP* service of the Lord's Supper, the 1662 Catechism,<sup>8</sup> sermons in both the *First Book of Homilies* and *Second Book of Homilies*, readings from Ephesians 5 in the *BCP*, the Great Litany, the *BCP* service of Communion, the Ordinal of 1662, and further writings from Cranmer.

The Bishops' unanimous response was in substantial agreement with the Assessors' conclusion. They noted that 'the Anglican Church teaches that persistent, unrepentant sin precludes a person from God's kingdom' (para 3(4)), and this includes sexual immorality (paras 3(7),(8)).

### The reception of the response in the Tribunal's Majority Opinion

In discussing the Majority Opinion's reception of the Assessors' response, I first need to address a confounding factor. The Assessors were, I believe, all operating on the assumption that the Tribunal had raised the issue of 'sexual immorality' in their question because the members of the Tribunal regarded the issue of sexual practice to be relevant to the Wangaratta blessing service. This, I believe, was an entirely reasonable assumption, given that: (a) we did not expect the Tribunal to be asking questions about issues they regarded as irrelevant; (b) the *BCP* service of the Solemnization of Matrimony regards sexual intimacy as fundamental to the purposes of marriage; (c) the Wangaratta service presents itself as a 'blessing on N and N as they continue their *married life* together' (emphasis added) and further, in its opening prayer of thanksgiving, foregrounds sexual intimacy: 'We thank you for the *physical and emotional expression* of that love; and for the blessings of companionship and friendship' (emphasis added). It is worth noting that the 'physical and emotional expression' of love appears in the Wangaratta service as something connected to but distinct from other aspects of married love, such as 'companionship and friendship'. In the context of a service blessing 'marriage', the phrase is clearly referring to the sexual aspect of the relationship being blessed, using terminology fitting for the occasion (obviously a more literal phrase such as 'sexual practice' would not be so appropriate).

However, the Majority Opinion, at several points, unaccountably denied that there is any *necessary* connection between sexual practice and marriage as it pertains to the Regulations (para 219; cf. paras 27, 30, 200, 251, 290). According to the Majority Opinion,

8 The Assessors noted that within the 1662 Catechism, 'part of our duty towards our neighbour is the need to "keep my body pure"—a reference to the command not to commit adultery' (3(f)). The Majority Opinion did not appear to accept this interpretation of the meaning of the Catechism. Indeed, they endorsed the statement in the Wangaratta submission that the 1662 Catechism 'says nothing of marriage' and claimed that the 1662 Catechism is 'silent about any particular sins said to be relevant to this Reference' (para 85, cf. para 175). However, they simply stated this view; they did not provide any alternative explanation of the meaning of the Catechism.

the issue of sexual intimacy is a separate issue, not directly relevant to the issues raised by the Wangaratta blessing service. They argue, for example, that the fact that ‘some same-sex marriages will be celibate’ provides a key reason why the burden of proof ‘rests upon those opposed to the particular blessing service to demonstrate why and where it crosses a constitutional line’ (para 200). It is true that the Assessors did not explicitly address the possibility of celibate marriages, but that is because (as noted above) I believe we were all reading the blessing service straightforwardly to be including sexual intimacy as part of what is being blessed. In other words, the issue at hand is not whether sexual intimacy occurs in every same-sex marriage (as the Majority Opinion seems to be arguing). Rather, the issue at hand is *what is actually being blessed in the blessing service itself*. The Majority Opinion appeared to be convinced that the blessing service does not address the issue of sexual intimacy at all. However, their reasoning on this matter cannot be discerned with any clarity, since nowhere in their Opinion do they discuss the wording of the proposed blessing service in any detail, nor opine directly on phrases from the service which appear straightforwardly to be addressing sexual intimacy, such as ‘the physical and emotional expression of that love’.

This purported separation of marriage and sexual practice appears to be a significant reason why the Majority Opinion treated the Assessors’ answer to the Tribunal’s own question about ‘sexual immorality’ as irrelevant to the issue of the use of the Wangaratta blessing service to bless same-sex marriages. They noted, for example, those submissions which (like the Assessors’ Response) set 1 Corinthians 6:9–11 in the context of the Church’s doctrines of salvation (para 212). However, they noted that the Tribunal was still ‘unable to perceive with necessary clarity’ how this was relevant to the constitutional and canonical validity of the Wangaratta blessing service. They argue, for example, that ‘Confession of sin and absolution are not aspects of the law or practice of the ACA with regard to marriage’ (para 213).

However, the Assessors’ argument was not just about the doctrine of marriage, but about *sexual immorality*. Sexual immorality is not only a key concern raised by the Wangaratta blessing service; it is also a key concern in the Tribunal’s own question. The Assessors thus addressed the issue of sexual immorality as we were asked to do, arguing that confession of sin and absolution are significant affirmations of ‘the teaching of the church concerning the link between sexual immorality and salvation’ (Assessors’ Report para 3(b)). This is entirely relevant to the matter at hand, because the Wangaratta blessing service is not simply pronouncing a blessing on two persons who *also* happen to be sinners needing forgiveness (cf. Majority Opinion para 226). Rather, it explicitly purports to bless the persons *in committing a sin that needs forgiveness*: sexual immorality. This is why it is quite different to solemnising or blessing the marriage of a man and a woman, or providing a liturgical blessing for some other activity that does not, in itself, directly imply sexual immorality.

### The reception of the response in the Tribunal’s Minority Opinion

The Minority Opinion, by contrast, understands the issue of sexual immorality as directly relevant to the details of the Wangaratta blessing service. ‘The Regulations seek to bless sinful practice, contrary to the Church’s teaching that persistence in sexual immorality endangers salvation’ (para 27). ‘Scripture teaches that homosexual practice is sinful, that persistent, unrepentant, sin threatens salvation and that such behaviour should not be blessed by the Church’ (para 87). Thus, the view that ‘persistence in sexual immorality endangers salvation’ is a ‘principle of doctrine’ (para 157). ‘The Church cannot bless behaviour which is sinful or

sexually immoral; in particular, it cannot bless or encourage behaviour, which, if persisted with, endangers salvation’ (para 159). Hence, ‘The Regulations seek to create a service of blessing for a same sex civil union which involves sexual practice outside of that which is taught or contemplated by Scripture and the doctrine of this church’ (para 159).

## Question 4: Baptism of children of a same-sex couple

The fourth question the Tribunal posed to the Assessors concerned the baptism of a child of a same-sex couple:

Do you see any doctrinal impediment or difficulty with the baptism of a child of a same sex married couple according to one of the Anglican Church of Australia’s authorised rites, including the use of the prayer for the child’s parents?

As I noted above, this question raises a specific instance of the many complex issues for those engaged in pastoral ministry as we respond to the recent legal redefinition of marriage in Australia. Ministers who face these issues require great insight as they deal with a variety of pastoral factors. In this case, there is the need to balance pastoral sensitivity for those experiencing same-sex attraction—especially those who have entered into same-sex civil marriages with children—with the pastoral requirement not to encourage sin in people’s lives or lead them into further unrepentant sin (as is emphasised in the Ordinal).

### The Assessors’ response

Having recognised the significance and complexity of these pastoral issues, the Assessors sought to provide an answer that both answered the question directly, and also provided material that could be used as the basis for further pastoral reflection. A key aspect of the Assessors’ argument was that within the *BCP*, which together with the Thirty-nine Articles is ‘the authorised standard of worship and doctrine in this Church’ (Constitution s 4), it is the godparents, rather than the parents, who make the declarations. The main problem, in other words, does not stem from the form of service in the *BCP*, but from other forms of service in widespread use, e.g. in *A Prayer Book for Australia (APBA)*<sup>9</sup> which includes a prayer for the parents. If, in following the APBA form of service, a same-sex couple is required to make promises to commit to Christian obedience *in their capacity as a same-sex couple who are in this respect being persistently disobedient*, then the church could be accused of encouraging hypocrisy. Thus, the Assessors allow for a pastoral response that conforms to the Church’s authorised standard of doctrine and worship (i.e. the *BCP* and the Thirty-nine Articles) while not requiring the parents to be involved in the prayer that appears in the *APBA* (or *AAPB*). So we responded:

In summary, there is no impediment to the baptism of a child of a same-sex married couple, though this would preclude the same-sex married couple themselves from being the sponsors while they are continuing to live unrepentantly in a same-sex relationship. (Assessors’ report para 4(n))

9 See also the baptism service in *An Australian Prayer Book (AAPB)*.

We noted that a pastoral response in this situation could also include private prayers of blessing focusing on ‘common grace gifts like peace, health, honesty, or generosity’ but not in such a way as to ‘assume a blessing on their married state, for God cannot bless that which is named as sin’ (para 4(k)).

The Bishops, in their response, noted a similar difficulty with using the APBA prayer for the parents: ‘there is certainly a difficulty, if not an impediment, when the parents are living, without repentance, in a manner which is contrary to the faith and practice of the Church’ (para 4(4)). They also raised further possibilities for navigating a pastoral response.

### The reception of the response in the Tribunal’s Majority Opinion

The Majority Opinion does not deal with the Assessors’ response in any detail. Its primary comments on the Assessors’ answer to this question are found in para 103 (cf. para 38). However, this section of the Majority Opinion consists primarily of a series of (in their words) ‘rhetorical questions’ that ‘should not be read as importing a legal ruling’ and do not ‘lead directly to the constitutional validity of the blessing of civil marriages’. Since the Majority Opinion only engaged with the Assessors’ answer to their own question briefly and rhetorically, I need only comment briefly about the rhetorical impact of their engagement (para 103).

In short, the Majority Opinion rhetorically marginalises the Assessors’ pastoral response. Their rhetorical questions, in other words, are written in such a way as to lead the reader to the opinion that their own suggested pastoral response is the only reasonable way forward, and that the Assessors’ suggested pastoral response is inconceivable. Their series of questions begins with the loaded phrase ‘is it not unthinkable...?’ The final rhetorical question about baptism is followed by a half-sentence quotation from the Assessors’ response, in which they omit the Assessors’ primary point about hypocrisy in the Church, and which they describe using the word ‘cavil’ (implying the Assessors were unreasonably complaining about an insignificant issue).<sup>10</sup> This rhetorical marginalising of the Assessors’ answer seems to be the sum total of the Majority Opinion’s engagement with the Assessors’ Response to the Tribunal’s own question on baptism.

### The reception of the response in the Tribunal’s Minority Opinion

The Minority Response, by contrast, engages directly and substantially, rather than rhetorically, with the Assessors’ response, along with that of the House of Bishops (paras 88, 89, 91). It agrees with the Assessors’ opinion about the impediment that arises because of the fact that the Church cannot teach that homosexual activity is permissible (para 89), and affirms details of the Assessors’ particular pastoral response (para 91). This is all in the context of an earlier acknowledgement of the significant pastoral issues involved in these matters, lamenting the pain that comes from speaking hard truths, yet trusting that God’s word is good (para 26).

<sup>10</sup> ‘Cavil’, *Cambridge Dictionary*, <https://dictionary.cambridge.org/dictionary/english/cavil> cited 25 January 2021: ‘to make unreasonable complaints, especially about things that are not important’



## Summary

The Board of Assessors, along with the House of Bishops, is a key voice of the General Synod to the Appellate Tribunal on matters involving doctrine, especially in cases where members of the Tribunal are not unanimous. In the case of the Wangaratta References, the Tribunal was deeply divided, particularly on doctrinal matters, but the Board of Assessors and House of Bishops were both unanimous and in fundamental agreement. However, the Majority Opinion of the Appellate Tribunal engaged inadequately with the Assessors' report.

On the question of the meaning and scope of 'the Faith', the Majority Opinion misconstrued and thereby summarily dismissed the Assessors' argument. On the question of the meaning of Article VI, the Majority Opinion did not clearly lay out their own view of the connection between obedience and salvation, and did not seem to comprehend the Assessors' exposition of this connection. On the question of persistence in sexual immorality precluding salvation, the Majority Opinion appeared to regard the Assessors' answer as irrelevant, based on their view that there was no necessary connection between sexual intimacy and the Wangaratta blessing service. On the question of a pastoral response to a same-sex married couple seeking baptism for their children, the Majority Opinion did not engage with the substance of the Assessors' response but rather, in one brief section, rhetorically marginalised the Assessors' view.

By contrast, the Minority Opinion evidenced substantial engagement with the Assessors' report and that of the House of Bishops, accepting the Assessors' advice and using it to inform the conclusion that the Wangaratta Regulations 'are inconsistent with the Fundamental Declarations' and 'Ruling Principles' and 'are not validly made under the *Canon Concerning Services 1992*' (para 27).





## PASTORAL CONSIDERATIONS



# Three pastoral principles

KANISHKA RAFFEL

**The starkly counter-cultural shape of Christian discipleship in the area of sexual ethics is predicated on the nature and characteristics of the Christian community. It is a community indwelt by the powerful Holy Spirit of God who is at work personally and corporately in God's people to transform them into the likeness of Christ, who rules, guards and guides his people by his Word. What then of pastoral care for gay or same-sex attracted people?**<sup>1</sup>

**T**his chapter is written from the same conviction as the other authors of this volume, that God has created marriage as the voluntary and exclusive union of one man and one woman arising from mutual promises of lifelong faithfulness. Accordingly, Christian discipleship in the area of sexual ethics involves faithfulness in marriage so understood, and chastity in singleness, whether as a person who has never married, or is divorced, widowed or same-sex attracted. Since people in all these circumstances are already members of Anglican churches, and since our mission is to bring the grace of God in the gospel of the Lord Jesus Christ to all people, including the LGBTIQ+ community, this chapter briefly explores three pastoral principles that are to inform our pastoral engagement in this deeply personal but culturally significant area.<sup>2</sup>

No doubt, there are other principles of effective ministry that might also be mentioned – but it is my conviction that these three are key, if we are to love those in our midst who experience same-sex attraction, and if we are to bring the message of hope and grace to those who do not yet know the love of God in the gospel of Christ.

1 I recognise that there is both great significance and distinction in the use of particular 'labels' in the area of sexual identity, and the same label can be used by different people to mean different things. I am using 'gay' to refer to those who are 'affirming' of their orientation, and 'same-sex attracted' to refer to people who do not embrace a gay identity or pattern of life, but who experience attraction to people of the same sex, exclusively or otherwise. Both labels may be used by Christians, but Christians who use 'gay' may or may not adopt an affirming stance towards their orientation.

2 A brief pastoral guide is available here: [https://www.sds.asn.au/sites/default/files/Same-Sex%20Attraction.A%20PastoralGuide.Oct2019.pdf?doc\\_id=NDM4NzQ=](https://www.sds.asn.au/sites/default/files/Same-Sex%20Attraction.A%20PastoralGuide.Oct2019.pdf?doc_id=NDM4NzQ=)

## Humility

*Therefore if you have any encouragement from being united with Christ, if any comfort from his love, if any common sharing in the Spirit, if any tenderness and compassion, then make my joy complete by being like-minded, having the same love, being one in spirit and of one mind. Do nothing out of selfish ambition or vain conceit. Rather, in humility value others above yourselves, not looking to your own interests but each of you to the interests of the others. PHILIPPIANS 2:1–4*

The words of the apostle Paul to the church in Philippi describe the relationship of fellow Christians in terms of a unity that proceeds from union with Christ; an other-person-centred love that arises from the experience of Christ's love; and a humility that is modelled on the self-giving sacrifice of Christ, 'who did not consider equality with God something to be used to his own advantage, but ... humbled himself even to death on a cross.' (2:6–8)

As those united to Christ, it is not enough for us to frame our response to questions of sexual ethics in accordance with 'the doctrine of Christ'; we must also, with equal earnestness and diligence, frame our pastoral response in accordance with the *pattern* of Christ. The unity of his people, which Christ has secured by his death on the cross, is to be expressed in Christ-like humility and service in our relationships with one another, and not only with fellow Christians, but with all those with whom we interact.

As an Anglican minister ordained 25 years ago, I have been privileged to meet and minister to people who identify as gay or same-sex attracted in every congregational setting in which I have served including suburban parishes, Cathedral ministry, and university ministry. I assume that this would be true of virtually every Anglican minister. Most of these people have been members of the church, others have been 'inquirers'. They have been young and old, male and female, married and single. Some have been in intimate same-sex relationships, most have been conscientiously celibate, a few have been in stable, heterosexual marriages.

What does the call to Christ-like humility entail in ministering to such people – 'people to be loved', as the title of Preston Sprinkle's excellent book reminds us?<sup>3</sup> At least, a posture of humility will be reflected in a repudiation of homophobia, and an embrace of active and engaged listening, and the offer of genuine welcome.

Homophobia, including name-calling, hurtful 'joking', stereotyping, bullying or intimidation of any kind is utterly incompatible with a Christ-like life and cannot comprise any part of the church's engagement with gay or same-sex attracted people. Then Archbishop of Sydney, Dr Glenn Davies said in a sermon delivered in St Andrew's Cathedral, Sydney at a memorial service for the victims of the Orlando bombing in June 2016:

As Australians, we abhor violence in all its forms—domestic violence, street violence, xenophobic violence, religiously motivated violence, and ... violence against members of the LGBTI community. As the leader of the Anglican Church in Sydney I want to affirm my stance against all such outbreaks of violence, and if any members of our churches have participated in such acts of violence against women, against young people, against ethnic minorities, against religious minorities or against those from

3 Preston Sprinkle, *People to be Loved: Why Homosexuality is not just an Issue*, (Grand Rapids, MI: Zondervan, 2015).

the LGBTI community I offer my heartfelt apology....Words of derision, mockery and exclusion so frequently fall from our lips when directed against persons who are different from us. This is especially the case for members of the LGBTI community, who have suffered the verbal abuse that so deeply cuts into a person's soul. Where we have been guilty of such words, I also offer my apology on behalf of the Anglican Church in Sydney.

The prolonged, public debate around same-sex marriage both nationally during 2017, and continuing in the church up to today, has been painful for many same-sex attracted and gay people, and their families. The affirmation of biblical teaching on sexual ethics and marriage has sometimes come across as disrespectful or condemning of homosexual people or those who experience same-sex attraction. The media is inclined to highlight conflict, and strident rather than temperate voices, and much hurt and confusion has ensued. This should grieve us all. Humble engagement therefore requires a commitment to deep and respectful listening.

Christian discipleship is inherently a practice of listening: Jesus said, 'the sheep listen to (the Shepherd's) voice ... his sheep follow him because they know his voice' (John 10:3–4). We are committed to hearing the voice of Jesus in Scripture and following him. Similarly, Christian communities are exhorted, 'be quick to listen, slow to speak, and slow to become angry' (Jas 1:19) and 'bear one another's burdens' (Gal 6:2).

Anglican minister Barry McGrath writes: 'The pastor is the listener. They listen for nuance and the cadence of a story. They listen for the heart of the story and the real issues... When hearing stories of identity and sexuality it is beholden on the pastor to listen with sensitivity and with insight. To hear a person's story, and to have empathy, or at least a glimmer of comprehension of what has gone on for the other, is crucial'.<sup>4</sup>

Listening is not merely a precursor to speaking. It is to offer respect, and to affirm the significance of another person's experience or perspective. Respectful listening creates an environment in which people are able to be open and safe at the same time, not fearing judgment or rejection but reassured and empowered to speak honestly. It is in the context of such mutually respectful exchange that the gospel can be heard in its beauty and redeeming grace.

**We are committed to hearing the voice of Jesus in Scripture and following him.**

The frequency with which the Gospels portray Jesus in social settings of shared meals point to the way in which the gospel is inherently hospitable. Jesus was notorious in his own day for 'eating with sinners', for going to the homes of tax collectors, and sharing meals with prostitutes. It is a sign of the way in which the gospel is God's invitation to those typically thought of as beyond redemption and under condemnation. The gospel is God's welcome to the undeserving – we are all saved by grace.

Consequently, Christian communities are to offer to others what they themselves have received from God – his generous welcome. Many same-sex attracted and gay people assume that they would not be welcome in church, or that to attend church they must already be 'signed up'. But we who know ourselves to have been 'dead in sin and transgression' and

4 Barry McGrath, 'Listening to a Complex Story' in *Sexegesis: An Evangelical Response to Five Uneasy Pieces on Homosexuality*, eds. Michael Bird and Gordon Preece (Anglican Press Australia, 2012), 137–138.



‘made alive in Christ’ by grace, cannot refuse welcome to any of those who seek Christ. Humility requires, on the contrary, a glad welcome into a community seeking to know and follow the one who said, ‘Come to me, all you who are weary and heavy laden, and I will give you rest’ (Matt 11:29).

## Identity

*So from now on we regard no one from a worldly point of view. Though we once regarded Christ in this way, we do so no longer. Therefore, if anyone is in Christ, the new creation has come. The old has gone, the new is here!* 2 CORINTHIANS 5:16–17

The ‘coming out’ story has become an important aspect of gay identity in parts of contemporary Western culture. It often includes a time of ‘awakening’ or ‘discovery’ that involves courageous self-acceptance and runs the risk of rejection by others in the name of a more fundamental affirmation of identity and authenticity. Many gay people have just such stories and they often include distressing accounts of hostility and outright rejection by friends and loved ones, sometimes including from Christian communities. Intentionally or otherwise, this can cause deep hurt. Christians and churches would do better to imitate Jesus, who rigorously upheld biblical sexual ethics and morality, and yet was not a threat, but a patient and compassionate companion.

For Christians who experience same-sex attraction, and who seek and desire to live in chaste and joyful obedience to Jesus, the journey is often just as fraught and uncertain. Same-sex attracted Christians are sometimes disappointed by the way in which their fellow Christians respond to the disclosure of their struggle and this can result in loneliness and discouragement, or even in the person succumbing to their sexual temptations and embracing a seemingly more welcoming and affirming gay community.

The complexities for same-sex attracted Christians seeking to live in accordance with a biblical morality are reflected even in the internal Christian ‘debate’ about how such people should describe themselves.

**Same-sex attracted Christians are sometimes disappointed by the way in which their fellow Christians respond to the disclosure of their struggle...**

UK pastor Ed Shaw describes how some people ‘identify’ as ‘gay Christians’ in order to speak in a comprehensible way to people who are not Christians, but he notes that in doing so they run the risk that by calling themselves ‘gay’, those who hear them will simply assume that they embrace a gay sexual ethic including intimate, sexual relationships. For this reason, Shaw uses the term ‘same-sex attracted’ (to describe himself)

in order to open up further conversation about what this ‘label’ means – a person who experiences same-sex attraction but lives a sexually chaste life in obedience to Christ. More importantly to Shaw, he wants to affirm that his primary identity is not his sexual orientation, ‘gay’; or his sexual temptation, ‘same-sex attraction’, but his identity in Christ. He writes:

Who is the true Ed Shaw? Not Ed Shaw as the society around me defines me. Not even Ed Shaw as I see myself. But the Ed Shaw who is both seen and defined by God

as his son! That is the identity I want people around me to hear of. And that is how I increasingly need to see myself.<sup>5</sup>

The Christian ‘testimony’ is itself a story of awakening to a new identity. The Bible’s account of the identity of every person who is ‘in Christ’ is a powerfully transformative story, and all people are invited into this story by the God who made us. It is a story of transformed identity that encompasses cultural diversity, ethnic and religious background, as well as gender and sexuality, but transcends them all (cf. Gal 3:26–28). It is essential that gay and same-sex attracted people are invited to understand God’s invitation in the gospel of Christ to know themselves as immensely precious and profoundly loved beings.

The creation of humanity is presented as the pinnacle of God’s creative activity in Genesis 1. The creation of humankind in God’s image distinguishes humans from everything else that God has created, and this comes to involve both blessing and responsibility. Importantly, nothing that unfolds in Scripture displaces the fundamental affirmation of the Bible’s first chapter – that all human beings are created in God’s image and, for that reason, are equal, uniquely precious, and deserving of honour and respect. The ‘fall’ of humankind depicted in Genesis 3 records the similarly universal truth of human failing and brokenness and its impact on relationship with God, with other humans and with the environment. But this does not displace the fundamental dignity of humans as created in God’s image.

The ultimate affirmation of the dignity of humanity comes in the incarnation of God the Son, the Word made flesh, in the person of Jesus Christ. His perfect life of righteousness and his substitutionary sacrificial death are redemptive for humanity, and, through faith in Jesus, anyone may become ‘a child of God’ (John 1:12).

For the Christian united to Christ through faith by grace, whatever sin or struggle marks our past or present, our identity arises out of and is irrevocably characterised by our adoption into God’s family and the indwelling of the Holy Spirit. ‘Wrongdoers’ will not inherit the kingdom of God, the apostle Paul says in 1 Corinthians 6, and among the Corinthian believers are those guilty of greed, theft, drunkenness, slander and sexual immorality – both heterosexual and homosexual. And yet, ‘That is what some of you were. But you were washed, you were sanctified, you were justified in the name of the Lord Jesus Christ and by the Spirit of our God’ (1 Cor 6:11).

Pastoral approaches to issues of identity – whether addressed to same-sex attracted people or opposite-sex attracted people – should highlight that the Christian’s identity is primarily *in Christ*.

As Ed Shaw writes:

[Union with Christ is] the incredible truth that I am now bound up in [Christ’s] identity and so share his right standing before God forever. I am one with him....So while we need churches that don’t airbrush the reality of sin from the gospel and our lives, we also need churches that enable their members to identify themselves primarily as children of God. I know that too often, church meetings have

5 Ed Shaw, *The Plausibility Problem: the Church and Same-Sex Attraction*, (Nottingham, UK: IVP, 2015), 38.

encouraged me to let my sin, rather than my Saviour, define me...most of all, I need reminding of who I am in Christ.<sup>6</sup>

In Christ, as Paul says in Ephesians 1, our identity is decisively changed by the love of God. We each experience the blessings of adoption, redemption, the forgiveness of sins; and we have the assurance of our election and the knowledge of God's will (Eph 1:3-10).

## Community

*Let the peace of Christ rule in your hearts, since as members of one body you were called to peace. And be thankful. Let the message of Christ dwell among you richly as you teach and admonish one another with all wisdom through psalms, hymns, and songs from the Spirit, singing to God with gratitude in your hearts. And whatever you do, whether in word or deed, do it all in the name of the Lord Jesus giving thanks to God the Father through him. COLOSSIANS 3:15–17*

In light of Jesus' teaching that the standard of sexual ethics for the Christian believer is faithfulness in heterosexual marriage and chastity in singleness (whether as a never-married person, divorced, widowed or same-sex attracted), it is sometimes asserted that the requirement of celibacy in Christian discipleship for the single person is impossible, cruel, or both. A key pastoral response to this charge is the nature and character of the Christian community, the church.

In his letter to the church in Colossae, the apostle Paul affirms that they are a community in which the Spirit is at work so that they may live 'a life worthy of the Lord and please him in every way: bearing fruit in every good work, growing in the knowledge of God, being strengthened with all power ... so that [they] may have great endurance and patience.' (Col 1:10–11)

The Christian is a person who is not merely called to a life of obedience, but a person indwelled by the Spirit of God who brings about the life that pleases God. The Christian is not only not alone, but also has the inward presence and power of God by his Spirit at work in them. It is on this basis that Paul is able to say to the church later in Colossians 3, 'let the message of Christ dwell among you richly'. The Lord rules his church by his Word, which 'dwells richly' or 'bears fruit' in the life of the community and its members as the Spirit applies that 'message of Christ' to each one.

The Christian community that is indwelled by the Spirit of God, and guided by the Lord's word, is a community characterised by deep relationships 'clothed with compassion, kindness, humility, gentleness and patience' (Col 3:12). The Bible envisages intimate, nurturing relationships between members of the church.

In our highly sexualised and individualistic culture, it is almost impossible to imagine intimate relationships that are not sexual. This is one reason why many regard lifelong celibacy as a practical impossibility if not a potential threat to well-being. But such a claim is an expression of cultural forces at a particular moment in Western culture rather than

<sup>6</sup> Ibid, p 41.

something inevitable or self-evident. Indeed, the contemporary Western church has often bought into this unbiblical way of thinking by making marriage, rather than holiness, the natural end of discipleship. This has had a negative impact on many single Christians, including those who experience same-sex attraction.

Marriage is to give the world a picture of the redemptive purpose of Christ; the fruitful life of the Christian who is not married gives the world a picture of the sufficiency of Christ. Marriage is good but it is not ultimate; we are not completed by our marriage partners but by Christ. The soulmate for whom we are made is Christ. Joined to Christ, we are incorporated into his body – a global, cross-generational, multicultural and eternal family in which we experience life in the Spirit, life to the full. As Paul says in Colossians 3:11, ‘Here there is no Gentile or Jew, circumcised or uncircumcised, barbarian, Scythian, slave or free, but Christ is all and is in all.’

Our shared identity in Christ is to be the basis of deep and nurturing friendships that are distinguished from the particular intimacy of the marriage relationship. Friendships of this kind require at least significant amounts of time devoted to conversation, shared activity, and deep sharing of the struggles and joys of life and a comprehensive vision of following Jesus, not one narrowly focused on issues of sexuality or temptation. Such life-giving friendships develop as trust deepens through mutual vulnerability, and the inevitable dynamic of forgiveness and repentance, and healing and growth as fellow believers seek to serve and encourage one another.

Of course, we are not naive about the church. It is a ‘work in progress’. Especially in relation to the care and inclusion of same-sex attracted brothers and sisters in Christ, there is much to be repented of and much more to be achieved. The Scriptures envisage that the community brought into being by its shared experience of the grace of Christ’s forgiveness is to offer and extend that forgiveness within its own life. ‘Bear with each other and forgive one another if any of you has a grievance against some. Forgive as the Lord forgave you’ (Col 3:13). Scripture also anticipates that every member of Christ’s body, the church, will have gifts of service to offer the whole body. The same-sex attracted Christian is not to be denied the opportunity to bless the whole church on the grounds of their same-sex attraction, but is to be held to the same standards of godliness as others who serve.

The website LivingOut.org offers church leaders a simple resource for conducting an audit of its biblical inclusiveness assessed against ten statements. For example:

- » All in your church are hearing the same call to radical self-sacrifice of themselves in response to God’s giving of himself in Jesus;
- » God’s gifts of either singleness or marriage are equally promoted, valued and practically supported in your church family’s life together;
- » All in your church are encouraged to develop an identity founded first and foremost on their union with Christ.

Undertaking to work through such an auditing process will assist a church to assess the extent to which they are offering substantial pastoral support not only to same-sex attracted Christians, but to single Christians in their church community generally.<sup>7</sup>

7 [https://www.livingout.org/storage/files/shares/Audit\\_Online.pdf](https://www.livingout.org/storage/files/shares/Audit_Online.pdf)

## Conclusion

I have sought here to set out three pastoral principles that are to undergird godly, loving engagement with gay and same-sex attracted people, whether as members of the church or those who are seeking to find a place with God. In many ways they are principles that undergird all Christian ministry in whatever context because they recognise our common need for the mercy of God, and the wonderful extent of his love for us in the life, death and resurrection of his Son, the Lord Jesus.

It is because of him that our pastoral engagement with people who identify as gay or same-sex attracted is to be marked by deep humility. We all share in the same fallen and weak humanity, and all need the powerful love and grace of God. What does any of us have in Christ that we did not receive from him?

Humble pastoral engagement also requires patience and care in understanding a person's self-description. In our cultural moment, the question of identity is deeply contested, maybe especially for those who identify as LGBTQ+. Yet for all of us who love Christ, it is our identity *in Christ* that comes to be foundational and primary. This has immediate, temporal and eternal consequences. Once we are united to him by faith, he works in us that which pleases him, as his indwelling Spirit applies his truth and grace to our lives.

And, united to Christ, we are bound together as a community of people who belong to him, where culture, gender and sexuality no longer function as barriers between people, but are transcended by our union with Christ – yet without sacrificing the diverse contribution of each member.

Intimate, nurturing relationships are a feature of the Lord-ruled, Spirit-indwelled community and not to be limited to relationships of sexual intimacy. All churches are 'works in progress' and do well to assess their culture and capacity for engaging all kinds of people, including same-sex attracted people, with the truth and grace of the gospel of Jesus. He bids the burdened and heavy laden to come to him and find the rest that only he can give, and gives us each other to help in carrying those burdens while we await our eternal rest (cf. Gal 6:2).

## INTERNATIONAL CONSIDERATIONS





# The Appellate Tribunal Opinion and worldwide Anglicanism

GLENN DAVIES

## Historical context

**T**he origins of the Anglican Communion are in the English Reformation of the sixteenth century, which God used to reform the Medieval Church, by shining the light of Scripture upon the overlay of church traditions that had obscured the gospel for centuries. The political manoeuvres of King Henry VIII can easily distract the casual observer from recognising the Reformation in England as a spiritual awakening that gripped a nation, under the leadership of Archbishop Thomas Cranmer during the brief reign of King Edward VI. This Reformation continued under the reign of Queen Elizabeth I, despite some setbacks during the mercifully short reign of Mary I. The foundational documents for the Church of England from the sixteenth century comprised the Bible, the *Book of Common Prayer* and the Thirty-nine Articles.

England's trading expansion in the seventeenth and eighteenth centuries enabled it to establish colonies and dominions around the world. Along with this expansion, clergy and missionaries of the Church of England planted churches in these colonies. Each of these churches was technically a branch of the Church of England, existing under the oversight (however remote) of a bishop within his diocese. While the American Revolution saw the first Anglican (self-described as Protestant Episcopal) Province develop outside of England, more peaceful transitions around the British Empire followed over subsequent centuries as worldwide Anglicanism blossomed.

In recognition of the geographical spread of Anglicanism and following a dispute that had arisen in South Africa, the first Lambeth Conference was gathered by the Archbishop of Canterbury in 1867, where bishops from around the Communion met to confer and pass resolutions that were morally, though not legally, binding on member provinces. Yet it was agreed by all bishops that they shared the one faith, in the Anglican tradition, as defined by Scripture, the *Book of Common Prayer* and the Thirty-nine Articles. This fundamental agreement on doctrine always ungirded their deliberations, as the Encyclical Letter issued after the 1920 Lambeth Conference to 'The Faithful in Christ Jesus' declared:

For half a century the Lambeth Conference has more and more served to focus the experience and counsels of our Communion. But it does not claim to exercise any powers of control or command. It stands for the far more spiritual and more Christian principle of loyalty to the fellowship. The Churches represented in it are indeed independent, but independent *with the Christian freedom which recognizes the restraints of truth and of love. They are not free to deny the truth.* They are not free to ignore the fellowship. And the objects of our Conferences are to attain an ever deeper apprehension of the truth, and to guard the fellowship with ever increasing appreciation of its value. If the Conference is to attain such objects, it must be because it is itself a fellowship of the Spirit.<sup>1</sup>

Sadly, the unanimity of doctrine in 1920 is no longer present a century later. The last Lambeth Conference that seriously addressed the slippage from the teaching of Anglican formularies was in 1998, where Resolution I.10 was passed.<sup>2</sup> In that resolution the vast majority of Bishops, while commending pastoral care and acceptance of those who experience same-sex attraction, rejected 'homosexual practice as incompatible with Scripture' and could not 'advise the legitimising or blessing of same sex unions nor ordaining those involved in same gender unions'. Yet sadly, member provinces have not only ignored, but violated, the 'fellowship of the Spirit' that had held the Anglican Communion together.

In 2002 the Diocese of New Westminster in Canada and in 2003 the Episcopal Church (USA) acted contrary to the spirit and the letter of Resolution I.10. Such actions, the Primates of the Anglican Communion predicted, would 'tear the fabric of the Communion at the deepest level.' The Archbishop of Canterbury therefore commissioned a report, known as *The Windsor Report*, which highlighted the significance of these developments:

The synod of the Diocese of New Westminster has requested the Bishop to provide and authorise a public Rite of Blessing for same sex unions; the Bishop has complied, and such services have gone ahead. The Episcopal Church (USA) has given its consent to, and proceeded with the consecration of, the person elected as Bishop of New Hampshire, a divorced man openly acknowledged to be living in a sexually active and committed same sex relationship, despite the primates describing that forthcoming consecration as one which might 'tear the fabric of our Communion at its deepest level'. The same General Convention which gave consent to this election also decided to allow experimentation with public Rites of Blessing for same sex unions. Many of those which have begun to be celebrated are similar to those authorised in New Westminster. We should also note that, after this Commission had already been set up, the General Synod of the Anglican Church of Canada passed a resolution affirming 'the integrity and sanctity of committed adult same-sex relationships'.<sup>3</sup>

1 Conference of Bishops of the Anglican Communion 1920 – *Encyclical Letter with Reports and Resolutions*, London: SPCK, 1920 p 14 [emphasis added].

2 See Appendix for the text of Resolution I.10.

3 *The Windsor Report*, para 27.

## The ordination of women and Anglican unity

Disputes over the ordination of women in recent decades have been rigorous and painful, yet they have not broken our communion, but merely impaired it. While scriptural interpretation has been at the heart of this issue, it has not been debated as a gospel issue, where one's salvation is at stake. We have learned to live together with two differing opinions. It has therefore been claimed by many that homosexual practice is of the same ilk. We can live together with differing opinions on this issue. However, unlike women's ordination, homosexual practice *is* a gospel issue (1 Cor 6:9-10). One's agreement or disagreement with allowing women to enter all orders of ministry does not affect one's salvation. Many provinces still uphold a male-only ministry, such as the largest Anglican province in the world, namely the Province of Nigeria. Other provinces ordain women as deacons, but not as priests, yet there is no suggestion that those who ordain women to all holy orders are in danger of losing their salvation, even if many consider such a practice contrary to the teaching of Scripture.

Moreover, the Lambeth Conference has discussed the ministry of women on many occasions. In 1968, for example, the Bishops recognised that the 'theological arguments for and against the ordination of women to the priesthood' were inconclusive 'at the present'.<sup>4</sup> Yet, twenty years later, the 1988 Lambeth Conference passed the following resolution, which read in part:<sup>5</sup>

1. That each province respect the decision and attitudes of other provinces in the ordination or consecration of women to the episcopate, without such respect necessarily indicating acceptance of the principles involved, maintaining the highest possible degree of communion with the provinces which differ.
2. That bishops exercise courtesy and maintain communications with bishops who may differ, and with any woman bishop, ensuring an open dialogue in the Church to whatever extent communion is impaired.

Then again in 1998, the Lambeth Conference called 'upon the provinces of the Communion to affirm that those who dissent from, as well as those who assent to, the ordination of women to the priesthood and episcopate are both loyal Anglicans'.<sup>6</sup>

It is undeniable that a state of impaired communion now exists between provinces that adopt the ordination or consecration of women and those that do not, since communion implies, among other things, the mutual recognition of orders, which is not possible across this theological and practical divide. The situation is even more fraught when different dioceses of the one province (as in Australia) adopt different practices with regard to the ordination of women.

Nonetheless, while our communion may be impaired with respect to women's ordination, it has not been broken, as differing provinces and dioceses still hold to the one Faith. Yet, when a province adopts a position that is contrary to Scripture and which affects salvation, as well as being a position that has received not only no endorsement from the

4 'The Conference affirms its opinion that the theological arguments as at present presented for and against the ordination of women to the priesthood are inconclusive.' 1968 Lambeth Conference Resolution 34.

5 1988 Lambeth Conference Resolution I.

6 1998 Lambeth Conference Resolution III.2.

Lambeth Conference, but a denial of the legitimacy of homosexual unions,<sup>7</sup> then any purported communion no longer exists. This is the stark reality of our current situation across the Anglican Communion, where the teaching of the apostle Paul, among others, is crystal clear that those who engage in homosexual behaviour cannot inherit the kingdom of God (1 Cor 6:10).

## The slide from same-sex blessings to same-sex marriages

The decision of the General Synod of the Anglican Church of Aotearoa, New Zealand and Polynesia to allow the blessing of same-sex unions has been strenuously defended by the assertion that the Church's doctrine of marriage has not changed. This claim is disputable, since a marriage which is contrary to their doctrine can now receive God's blessing. Furthermore, a tacit approval of same-sex marriage has already been accepted by the Church, as a number of senior clergy in New Zealand are in same-sex marriages without any censure from the Church. Nonetheless, recent history demonstrates that most of the provinces that first adopted same-sex blessings have now either changed or are in the process of changing their doctrine so as to endorse the legitimacy of solemnising same-sex marriages. The logic, of course, is clear. If one considers it is truly God's blessing that a minister pronounces upon a same-sex union, then clearly the union is deemed legitimate. If the union is legitimate, and deemed not contrary to God's teaching on sexual immorality and marriage, then the slide towards legitimising same-sex marriages is inevitable. Recent history across the Anglican Communion confirms this slippage, as the following examples demonstrate.

### USA

In 2009, the General Convention of The Episcopal Church (TEC) in North America charged the Standing Commission on Liturgy and Music to develop theological and liturgical resources for same-sex blessings and to report back to the General Convention in three years' time. In 2012, The Episcopal Church approved an official liturgy for the blessing of same-sex relationships. This liturgy was not a marriage rite, but the blessing included an exchange of vows and the couple's agreement to enter into a lifelong, committed relationship.

On June 29, 2015, five days after the US Supreme Court ruled that same-sex couples had a legal right to be married, the 78th General Convention of the Episcopal Church voted to amend the canons of the Episcopal Church so as to permit any couple (regardless of gender) the rite of Holy Matrimony. The House of Bishops also passed a resolution allowing clergy to solemnise same-sex marriages, without compelling any clergy to do so.

In 2018 a marriage rite for couples, including same-sex couples, was approved by the General Convention. However, when Bishop Love of the Diocese of Albany refused to allow this rite in his Diocese, he was disciplined and would have been expelled from office, had he not resigned in 2020.

7 1998 Resolution I.10.

## Canada

In 2002, Vancouver's liberal-dominated Diocese of New Westminster voted in favour of blessing same-sex unions, thereby becoming the first Anglican diocese in the world to formally recognise committed gay and lesbian relationships at synodical level. By 2013, ten Anglican dioceses in Canada had voted to allow the blessing and marriage of same-sex couples. In 2019 the General Synod of the Anglican Church of Canada considered a motion to change the canons on marriage, with 2/3 support from both the House of Laity and House of Clergy, but narrowly failed to achieve a 2/3 majority in the House of Bishops. Nonetheless, 19 of the 30 dioceses continue to solemnise same-sex marriages, despite the lack of a General Synod Canon. It is inevitable that the General Synod will eventually obtain the required two-thirds majority in the House of Bishops in due course.

## Scotland

In 2005, clergy were able to enter into same-sex civil partnerships, and sexual abstinence was not considered a requirement by the Scottish Episcopal Church for such civil unions. Since 2008, St Mary's Cathedral in Glasgow has offered blessings for civil partnerships.

In 2015, the Scottish Episcopal Church voted in favour of same-sex marriage ceremonies. In 2016, the General Synod voted in favour of amending the marriage canon to include same-gender couples; the change required a second reading in 2017, which was passed.

## Wales

In 2015, the Governing Body considered a motion to allow same-sex marriages to be held in church, but failed to receive the required two-thirds majority. However, in April 2016, the Bench of Bishops decided to fully affirm same-sex couples and to offer prayers of celebration for same-sex marriages. Towards the end of 2020, the Bishops drew up a rite for use after a wedding or civil partnership, effectively pronouncing a blessing upon same-sex couples for consideration by the Church of Wales in 2021. It was therefore not surprising that in September 2021, the Governing Body voted for the blessing of same-sex unions, with the Bishops, the reputed guardians of the Faith, voting unanimously in favour.

## Brazil

In 2016, the Presiding Bishop convened an Extraordinary Synod to discuss adding same-sex marriage to the marriage canon; the proposal was not approved, but it was considered during General Synod in 2017. On 1 June 2018, the General Synod voted to change the marriage canon to include same-sex couples.

## Unity in Christ

As Anglicans, we recognise our Christian faith is not individualistic, but corporate. We are part of the whole. Because we belong to Christ, we are part of a local church; because we are Anglicans, our local church belongs to a diocese; similarly, our diocese belongs to a province; and our province is part of the worldwide Anglican Communion.



Yet we have not received the measure of leadership from those in high office, as we might have expected. The blatant dismissal of Resolution I.10 of the 1998 Lambeth Conference and the lack of discipline that has followed such breaches of fellowship remain, despite the calls of the Primates of the Anglican Communion for action. The current Archbishop of Canterbury has called together the bishops of the Anglican Communion in 2022. However, unlike his predecessor, he has chosen to invite three bishops who are in same-sex relationships. Moreover, somewhat surprisingly, where the bishops' spouses have been invited, the Archbishop has declined to invite the spouses of those bishops in same-sex marriages, because they are in violation of Resolution I.10. The incoherence of this position is hard to fathom, as it seems manifestly unfair to punish those who are not bishops, simply because they have married a bishop of the same sex, whereas the bishops themselves receive no censure, despite their being in clear contravention of Resolution I.10.

Yet the testimony of censure recorded by the *Windsor Report* still stands:

The overwhelming response from other Christians both inside and outside the Anglican family has been to regard these developments as departures from genuine, apostolic Christian faith....

Within our own Communion, some eighteen of the thirty-eight provinces of the Anglican Communion, or their primates on their behalf, have issued statements which indicate, in a variety of ways, their basic belief that the developments in North America are 'contrary to biblical teaching' and as such unacceptable.<sup>8</sup>

It is worth remembering the very first Lambeth Conference in 1867, where Archbishop Longley of Canterbury stated that the reason for gathering the bishops of 'the Reformed Church in visible communion with the United Church of England and Ireland' was for the purpose of

cementing yet more firmly the bonds of Christian communion between Churches acknowledging one Lord, one faith, one baptism, connected, not only by the ties of kindred, *but by common formularies*...our very presence here is a witness to our resolution to *maintain the faith, which we hold in common as our priceless heritage, set forth in our Liturgy and other formularies*.<sup>9</sup>

Sadly, not all the bishops who have been called to Lambeth 2022 adhere to our 'common formularies', as neither the Thirty-nine Articles nor the principles of the *Book of Common Prayer* are considered as standards of doctrine for many Churches in the Anglican Communion.

This causes us to consider what exactly is the Anglican Communion? Who decides who is part or not a part of this august body?

A legal answer may be found in *Halsbury's Laws of England, Vol.13 Ecclesiastical Law* which defines the Anglican Communion as:

a fellowship of churches historically associated with the British Isles. It embraces all those churches that are in conformity with the faith and doctrine of the Church of England. It includes the Church of England, the Episcopal Church in Scotland, the

8 *The Windsor Report*, para 28.

9 [http://anglicanhistory.org/lambeth/conference\\_bishops1867.html](http://anglicanhistory.org/lambeth/conference_bishops1867.html), emphasis added.

Church in Wales, the Church of Ireland, the Protestant Episcopal Church in the United States, the Churches of India, Pakistan, Burma and Ceylon and the numerous churches in the Dominions, Colonies, and foreign parts that are in conformity with the faith and doctrine of the Church of England.

Note the importance of ‘being in conformity with the faith and doctrine of the Church of England’. Here the language of ‘communion’ is so important. While the bishops came together in conference for fellowship and the resolution of difficulties, their fundamental agreement on doctrine always undergirded their deliberations.

It is highly regrettable to say this, but it would appear that the Anglican Communion has lost its moorings, in that those who consider themselves part of the Communion have abandoned the historic formularies. In other words, rather than the Archbishop of Canterbury inviting those bishops who uphold the foundational trio of the Bible, the *Book of Common Prayer* (1662) and the Thirty-nine Articles, he has erred in two respects. He has failed to invite those bishops who uphold Reformational Anglicanism and has invited those bishops who have repudiated these fundamental truths. It is the adherence to this trio of documents, where the primary text of Scripture is the authoritative norm, which defines true Anglicanism and truly defines the Anglican Communion. Where adherence to any one of these documents is lacking, there is no Anglican presence, only the historical remnants of remembering what once tied us together.

For this reason we can be thankful that the Constitution of the Anglican Church of Australia defines our communion with other Churches *doctrinally*, not historically. Section 6 states it in this way:

This Church will remain and be in communion with the Church of England in England and with churches in communion therewith, so long as communion is consistent with the Fundamental Declarations.

Our Constitution does not tie us to Canterbury. It ties us to the Church of England, but only as long as its doctrine is ‘consistent with the Fundamental Declarations’. If England were to depart from the ‘commands of Christ’ or from ‘His doctrine’ the Anglican Church of Australia would no longer be in communion with the Church of England. Our communion with other Churches is similarly grounded in doctrine, not merely ‘the ties of kindred, but by common formularies.’ We would still be part of the Anglican Communion, truly conceived, but not necessarily part of the Canterbury Communion.

The seriousness of departing from the commands of Christ, as evidenced by the recent decision of the General Synod of the Anglican Church of Aotearoa, New Zealand and Polynesia, to allow bishops to authorise the blessing of same-sex unions in their dioceses, caused our own General Synod Standing Committee to note that this decision ‘is contrary to Resolution I.10 of the 1998 Lambeth Conference and is not in accordance with the teaching of Christ (Matt 19:1-12).’ Accordingly the Standing Committee in 2019 noted that relationships ‘have been impaired in the wake of this change.’

The Anglican Communion had for centuries been able to fellowship together, despite differences over the years. However, although the ordination of women has impaired our communion, the blessing of couples in same-sex unions has broken it. It is not possible to fellowship with those who deny the truth of God’s word, as the Anglican Church of Australia has received it. Since other provinces of the Anglican Communion have despatched the

Thirty-nine Articles and the *Book of Common Prayer* to the archives, while sitting loosely to the authority of Scripture, the bonds of fellowship that bound us together have been broken.

The recent Opinion of the Appellate Tribunal has tragically misread not only the texts of Scripture, but mistakenly assumed that the bonds of unity are able to be stretched to include same-sex blessings, on the assumption that the issue is akin to women's ordination. Yet some 50 million Anglicans of a worldwide 70 million membership think differently, having rejected same-sex blessings and in many cases having declared their broken communion with those provinces that have accepted same-sex blessings. For the General Synod of the Anglican Church of Australia to retain its Anglican identity, we must not succumb to the way of the world, nor be deceived, as Paul warned the church at Corinth (1 Cor 6:10).

Our fellowship of the Spirit is a communion grounded in the truth: the truth of God's word and his gospel. When the structures that were put in place to guard this communion fail, it is incumbent upon us to renew, reclaim and refresh those structures, for God's mission in the world and for the greater glory of the God and Father of our Lord Jesus Christ.

# The New Zealand experience

DAVE CLANCY

## Introduction

**T**he proverbial analogy of a frog in a pot is an excellent description of the issues facing the Anglican Church of Australia, and indeed the Anglican Communion globally. The ‘temperature’ of the church culture around us is slowly increasing. It also accurately captures the experience of Anglicans in the Anglican Church in Aotearoa, New Zealand and Polynesia (ACANZP). There was, however, a tipping point – a moment when (to push the analogy) the simmering water started to boil. This chapter seeks to provide a brief account of the journey that led to that moment, how orthodox Anglicans responded, and describe a little about what life has looked like in the past two years.

There are some preliminaries that should be established before this account is told. First, there are a number of features of the structure<sup>1</sup> and processes<sup>2</sup> of the Province of the Anglican Church in Aotearoa, New Zealand and Polynesia that are unique. Some of these had a significant influence on what the particular tipping points were, and shaped how people responded. Second, this account is being told by one who disaffiliated from the ACANZP and is part of the Church of Confessing Anglicans Aotearoa New Zealand (CCAANZ). But ours is not the only story of how faithful, orthodox Anglicans responded, and it’s important to acknowledge that there are many sisters and brothers that currently remain in the ACANZP who hold firmly to the authority of the Bible and the Lordship of Christ. Their journey has been hard as well. Third, this is a very high-level summary of what happened. It certainly seeks to be accurate, but any event such as what Anglicans in New Zealand have gone through will have subtleties and complexities that cannot be addressed in a short chapter such as this.

1 The Anglican Church in Aotearoa, New Zealand, and Polynesia (ACANZP) is a three tikanga church. Tikanga is a Māori word roughly translated as ‘culture’ or ‘correct procedure/custom’. The three tikanga are Maori, Polynesia, and Pakeha (roughly translated as non-Maori New Zealander). Each tikanga has its own dioceses, bishops, etc., which geographically overlap each other in the islands of New Zealand, and representatives of all three tikanga make up the General Synod.

2 Most significantly, the Constitution/Te Pouhere of the ACANZP required that all ministers sign an Adherence of Submission to the authority of General Synod. Common practice elsewhere in the Communion is submission to a minister’s local bishop.

## What led to the tipping point

Matters of human sexuality have been debated and discussed in ACANZP for decades. This has happened at times through formal and established means – between 2009 and 2013 four Hermeneutical Hui<sup>3</sup> were held, with various papers presented and views shared from across the theological spectrum – and at other times there has been independent action by Bishops ordaining or licensing those in same-sex relationships.<sup>4</sup> In 2012 there were formal proposals at General Synod to introduce liturgical services for the blessing of same-sex relationships and to grant episcopal autonomy to Bishops to ordain those in such relationships. While those particular proposals were not enacted, over the coming years a series of working groups were formed by General Synod, with reports written and proposals offered as to how the ACANZP would address these matters and bring about change in the doctrine and practice of the church.

It is significant that the ACANZP never had a decisive moment when there was a formal decision to change, in principle, the Church's doctrine. While there was an initial narrative of there being 'two integrities' (i.e., those who held that blessing same-sex relationships was consistent with Scripture, and those who considered that it was not), this slowly changed to there being many theological positions held in the Church with integrity. The focus therefore became a conversation about providing structures and processes to allow for these integrities to practise what they believed, rather than any sustained, determinative discussion of what was true according to Scripture. Despite sustained engagement by those holding a traditional position to say that the Church could not and should not permit change to its scriptural practice of not blessing such relationships, change appeared to be a *fait accompli*.

It was at General Synod in 2018 that Motion 7 was passed allowing clergy to bless same-sex marriages or civil unions if their diocesan Bishop granted permission. Because the Formularies of our Church (which state a traditional position) were not able to be changed, they were simply avoided by amending various Canons. Supporters of the change asserted that there was no alteration to the doctrine of marriage. While some may say this is technically correct, in practice there was a significant and formal change in the doctrine and practice of our Church.

Many of the Canonical changes purported to provide for, and protect, those holding a traditional position. For example, the wording of the Adherence of Submission was changed from submitting to the authority of the General Synod, to obedience to the Constitution/Te Pouhere and the judgments of those holding authority under that constitution and the code of Canons. Disciplinary Canons that were altered to ensure that no clergyperson or bishop could be disciplined for performing a blessing, also provided protection for those who refused to undertake blessings. These changes also meant that teaching and preaching was protected. No minister could be disciplined for preaching or teaching that 'such services [of blessing] are, or are not, consistent with Holy Scripture and the doctrine for this Church.'<sup>5</sup> Provision was made for the formation of 'Christian Communities', voluntary associations where those holding (for example) a traditional position could form a Community, appoint an ACANZP bishop as a Protector, and any clerical appointment to a

3 Hui means meeting or gathering.

4 For example, <https://www.nzherald.co.nz/nz/conservatives-unhappy-at-gay-ordination/TFWE4FFCIGQN6IUBBJXELHMA/>. Accessed 29 January 2021.

5 Title D Canon III.19.c.



parish in the Community had to agree to the rules of that Community. These communities offer additional episcopal support, not alternative episcopal oversight. Clergy in them sign the Adherence of Submission, are bound by all ACANZP Canons, are subject to their diocesan Bishop, and remain full communicate members of the Province.

Despite these seemingly positive provisions for those holding a traditional position, there was no escaping that ACANZP had changed both its belief and practice on matters of human sexuality. By removing disciplinary action in both the areas of practice and teaching, the church now declared that God said two contradictory things about same-sex relationships – in one parish God blessed them; in another God called for repentance. Many were deeply concerned not just about our present circumstances, but about our future. While existing clergy were protected, what about those being raised up? Would such a church be welcoming to those who disagree with this dual-position stance? Would those who seek to hold to the loving truthfulness of the Bible want to minister within such a structure? While the concept of a Christian Community appeared to offer hopeful answers to these questions, many viewed it as a paper tiger.

## What to do?

While there was general agreement amongst those holding a traditional view on sexuality that what General Synod had done was inappropriate and that legal challenge was unlikely to do any good, people responded in different ways. Many experienced a significant sense of grief at the departure the ACANZP had taken from the Bible. While in the preceding years, some clergy and churches had been teaching what the Bible taught on these matters, and what the ACANZP was intending to do, many had not. There was therefore a need for careful, pastorally sensitive preaching and information sharing.

This care and pastoral sensitivity extended into discussions with and between parishioners, Wardens and Vestries, and clergy, about what possible responses were available. Some congregations had previously made resolutions about what they would do if General Synod passed Motion 7, but most had not. There were many meetings and careful consideration of options. The Fellowship of Confessing Anglicans produced a workbook to guide churches through a time of discernment.

Throughout this time there was a growing recognition that people who held the same belief considered quite different practical responses to be appropriate. Some felt in their consciences that they could no longer submit within ACANZP; for others their consciences allowed them to remain. Some individuals or parishes were in circumstances where they had a bishop who would support and protect them, or where their ministries were tied so strongly to church buildings that they did not think it appropriate to disaffiliate. There were many lay people who quietly left their churches, unable to remain part of the ACANZP. Even amongst parishes and parishioners who decided they could not remain in the Province there was a range of ways of going about this. Some held general meetings and voted as a group to disaffiliate, in other situations, clergy simply resigned and those who chose to go with them did so. In some cases, whole congregations left, in others there was a split, with some parishioners leaving and others remaining. They were very difficult days, with care, patience, and great grace needed by all.



There was a recognition amongst those who could not stay in ACANZP that, while legally we had ‘disaffiliated’ from the Province or resigned our licences, in principle we had not changed our belief or behaviour as Anglicans. The Province had gone to a place that we were not able to follow. As those left behind, we needed to organise ourselves well. We were Anglican, and sought to remain Anglican. Through a year-long series of meetings attended by clergy and lay representatives from churches who had, or were intending to disaffiliate, shape was prayerfully given to what would become the Extra-Provincial Diocese of the Church of Confessing Anglicans Aotearoa New Zealand. We deliberately acknowledged that we were not seeking to reform the church or bring about wholesale change, but rather to retain much of the godly breadth and diversity which we so valued, standing on the Anglican Formularies of the 1662 *Book of Common Prayer*, the Ordinal, and the Thirty-nine Articles. Part of this was to provide an Anglican structure into which others, who at the current time chose to remain in ACANZP, could move if their consciences or circumstances changed, or if ACANZP enacted additional doctrinal or practical innovation.

However, there were things in the structure and processes of the ACANZP which had made faithful, Bible-based, gospel-proclaiming ministry hard, and which had tended to prioritise the diocese rather than the parish as the centre of God’s work. There was a need to carefully shape the core beliefs and ecclesiological position of a new Diocese which would be faithfully Anglican in orthodox belief and boldly Anglican in missional drive. These were then captured in a Constitution, developed into core Canons, debated and discussed by clergy and lay representatives, until at a Synod on 17–18 May 2019 twelve parishes formed themselves into the Church of Confessing Anglicans Aotearoa New Zealand and elected its first Bishop. We remain incredibly thankful for the help and support we received from around the world, but especially through Gafcon Australia, throughout this time. That sense of fellowship and partnership was given particular expression as over twenty bishops and archbishops from around the world gathered in October 2019 and joined the Most Rev Foley Beach in consecrating the Rev Jay Behan as Bishop.

## What has it looked like since then

While the desire was not to reform, in God’s mercy and grace CCAANZ’s first year has been a time of wonderful refreshment and growth. There has been a great sense of unity between clergy and churches. This has been expressed in the sending of teams to support mission and ministry in other parishes, financial support to new and struggling parishes, regular prayer support and sharing of resources. There is a sense of partnership in the gospel which was not experienced by many previously. Over the year the diocese has grown from 12 parishes to 17, and in October 2020 four people (three men, one woman) were ordained as deacons, with more in a discernment process for future ordination.

However, it has been hard work. For many there still remains grief and mourning for what has been lost – church buildings and offices, vicarages, friendships, history. A number of clergy have taken significant reductions in their stipends. Many lay people have sacrificially increased their giving, and stepped up to meet the new reality of meeting in halls and houses. They have ensured that corporate worship and sustained ministry can continue in their communities, despite the fact that they have had to leave church buildings.

At times there has been significant opposition from the dioceses which people have left, and on occasion, the media and others have been caustic in their language about those who have departed.

The cost has not only been borne by those who formed CCAANZ. Those who have remained in ACANZP have expressed that they struggle at times with feeling abandoned or implicitly judged by those who have formed CCAANZ, wondering what life would be like now in ACANZP if Motion 7 had not passed. We all continue to have to work very hard at maintaining good relationships and seeking to think the best of each other.

## Conclusion

There are many things which Anglicans in New Zealand have endured over the past few years which have been hard. But as described above, there is much for which we can be thankful. Only the Lord knows what our future holds – whether ACANZP will return to an orthodox position on human sexuality, or whether further changes will see others unable to remain. As we seek to maintain the best possible relationships between those in both Anglican structures, we press on, proclaiming the good news of Jesus Christ.

We hold the Anglican Church of Australia in our prayers, that those who hold to the gospel of God's grace revealed in Christ might bear with each other in love, and that the Lord might grant you his wisdom as you contend for the faith once for all entrusted to the saints.



# View from the Church of England

ANDREW SYMES

## Has the Church of England crossed the line?

In the statement released in December 2020 entitled ‘Commitment 2020’,<sup>1</sup> Gafcon Australia set out five imagined scenarios in the Anglican Church of Australia ‘where faithful Anglicans will believe they can no longer accept the ministry of their Bishop’. As we survey the scene in the Church of England, it is a useful exercise to ask firstly, to what extent have these scenarios occurred in the Church of England? and then, what has been the response of faithful Anglicans in England?

**Scenario 1: ‘Where a Bishop no longer personally believes the doctrine of the Church, (even though they might not act on this or require others to do so).’**

Bishops with heterodox views have a long history in the Church of England: John Robinson and David Jenkins are perhaps the best-known examples from past decades. The Gafcon Australia ‘Commitment 2020’ document has been written in the context of attempts to overturn a specific area of doctrine, the biblical ethical teaching about sex and marriage. It is the ‘revisionist’ interpretations of doctrine in this area, and subsequent actions by Anglican progressives, mostly in the Western world, which have ‘torn the fabric of the Communion’. To what extent has there been evidence of this among Bishops in the Church of England?

Some Bishops have publicly stated they no longer believe that marriage is defined as an exclusive relationship between one man and one woman, or that physical intimacy outside this relationship is sinful. Instead they commend services of blessing for same-sex couples, as Stephen Cottrell, now Archbishop of York, did in his charge to Chelmsford Diocesan Synod in 2017,<sup>2</sup> and even indicate their full support for same-sex marriage, as Paul Bayes, Bishop of Liverpool, has done publicly since 2015, and Alan Wilson, Bishop of Buckingham argued in his book *More Perfect Union?: Understanding Same-Sex Marriage*, published in 2014. Other Bishops have enthusiastically supported their local LGBTIQ+ Pride festivals while claiming to hold to the Church’s official teaching on marriage. These include Nick Holtam (Salisbury) and Martin Warner (Chichester).

<sup>1</sup> <http://www.gafconaustralia.org/wp-content/uploads/2020/12/Commitment-2020.pdf>.

<sup>2</sup> <http://anglicanmainstream.org/bishop-of-chelmsford-calls-for-prayers-of-thanks-giving-for-same-sex-relationships/>.

But there are also less obvious examples. Some Bishops are careful not to be seen to call publicly for a change in canons, liturgy and doctrine, but nevertheless have called for ‘maximum freedom’ within the existing parameters. Then, a number of Bishops apologised for a ‘Pastoral Statement’ released in December 2019 which reiterated the Church’s official teaching on marriage in the light of changes in UK laws on Civil Partnerships. For example Colin Fletcher, acting Bishop of Oxford while Steven Croft was on sabbatical, wrote an *ad clerum*<sup>3</sup> on behalf of all four Bishops in the Diocese, in which he made an excuse for the publication of this official episcopal statement, apologised for it himself, and called it ‘wrong-headed and pastorally inept’. He quoted with approval highly critical articles about the statement in *The Times* and in the progressive Via Media blog, both of which derided historic Christian teaching about sexual ethics and the Church of England’s attempts to navigate the issue.

In other cases, Bishops often from an evangelical background will assure conservatives of their personal belief in the historic biblical teaching, but they are reluctant to publicly explain and commend this teaching which is, of course, counter-cultural and potentially unpopular. Meanwhile, they give their backing to processes attempting to steer a middle way between the different views and factions in the church, such as the ‘Shared Conversations’ initiative (2015–2016), the Bishops’ Report on marriage and same-sex relationships (GS2055, 2017), and the comprehensive suite of resources called *Living in Love and Faith* (2020). These are negotiation initiatives, which essentially undermine the teaching of the Church, by suggesting that, although there is no immediate proposal to change canons and liturgy, different views on the matter are equally valid, and the important thing is mutual understanding and reconciliation.

The question needs to be asked: If a Bishop claims to personally believe that same-sex relationships are not compatible with authentic faith, but then approves official documents and processes which say that the basis for this belief is unclear, that heterodox interpretations are permitted, and that the issue of sex and marriage is essentially a second-order issue, can they be said to believe the orthodox position?

**Scenario 2: ‘Where a Bishop fails to act in restraining or disciplining a clergy person from acting against the doctrine of the Church.’**

In November 2016, the newly formed Gafcon UK published on its website an article entitled ‘The Church of England and Lambeth I:10’.<sup>4</sup> The rationale for this was as follows:

Many are asking whether or not the Church of England will ‘hold the line’ on sexuality. Unfortunately, the lines drawn by Lambeth I.10 have already been crossed, in some cases, going as far back as 2002. This document catalogues some of the ways in which Lambeth I.10 has been violated within the Church of England.

The article lists numerous examples where the agreed teaching of the Anglican Communion on sexuality and marriage, as summarised in the 1998 Lambeth Conference resolution, and indeed the canons and episcopal guidance of the Church of England, had been violated over a number of years. The examples mostly consist of clergy conducting the blessing of same- sex

3 <https://mailchi.mp/oxford.anglican.org/ad-clerum-february-2020>.

4 <https://gafcongbe.org/church-england-and-lambeth-i10>.

relationships or making it clear that they will do so, and that these incidents have been openly reported and available to view in the public domain. (The list did not include the far greater number of such ceremonies which have not been publicised.) In each case, there was little or no discipline of the clergy involved. If questioned, Archdeacons or Bishops would often refer to the process of ‘conversation’ going on in the Church, reflecting the reality that although the doctrine and liturgy have not officially been changed, an environment has been created in which these documents’ controlling belief and behaviour are seen as provisional, open to discussion and reinterpretation, and even ignored in the name of ‘prophetic action’.

Since the 2016 article was written, there have been numerous other examples of failure to restrain those violating the doctrine of the Church. For example, ordinands at theological college post on social media about their (same-sex) ‘husband’ or ‘wife’, and cathedral Deans host lectures which call on the abolition of orthodox Christian sexual morality. The small number of high-profile cases where disciplinary action is brought against clergy, as in the case of Jeremy Pemberton<sup>5</sup> who was refused a licence from his Bishop to practise as a hospital chaplain after he entered into a same-sex marriage, result in such vitriol being directed towards the Bishop that many prefer to turn a blind eye.

A grey area for some years has been Civil Partnerships. In 2005, following the introduction of these legally recognised same-sex relationships by the UK government, the Church of England issued guidance that clergy could enter into such arrangements, but must give an assurance to their Bishop that they are ‘living in accordance with the teaching of the Church’, that is, that their relationship is celibate.

The result is that clergy living in vicarages with their same-sex partners, and teaching doctrines contrary to the received ethics of the Christian faith, can claim to have done nothing wrong in relation to Church doctrine.<sup>6</sup>

**Scenario 3: *‘Where a Synod adopts a resolution contrary to the doctrine of the Church and a Bishop allows actions consistent with that resolution.’***

During the 2017 General Synod, the Church of England saw two significant examples of such resolutions. A report from the time<sup>7</sup> said:

On 8th July, General Synod of the Church of England voted to back a complete ban on ‘Conversion Therapy’, a term used by critics to describe ways in which people who want to reduce or be free of homosexual desire and practice access help in the form of therapy or counselling... The Church of England’s governing body has effectively censored a whole area of conversation. If anyone comes to their vicar now and says, ‘I have same-sex attraction, I’m not happy about it and want to change – can we have a conversation about this?’ the answer will from now on be: ‘No I’m sorry we can’t discuss that, because it might cause you harm’.

During the debate, speakers seeking to re-state the Church’s official teaching on sex and marriage were actually booed from the floor, with no rebuke from the Chair (the Archbishop of

5 <https://www.psephizo.com/sexuality-2/the-end-of-the-pemberton-appeal-saga/>.

6 This arrangement has justly been criticised by both liberals and conservatives as promoting confusion, dishonesty and hypocrisy, as detailed by Ian Paul in this thoughtful piece: <https://www.psephizo.com/sexuality-2/is-the-bishops-policy-on-civil-partnerships-sustainable/>.

7 <https://anglicanmainstream.org/synod-supports-ban-on-conversion-therapy-what-it-means/>.



York). Commenting on the debate, one lay member of Synod wrote on the Gafcon website:<sup>8</sup>

The quality of debate has fallen sharply in recent years. The vogue is to vocalise experience and ‘tell stories’. In particular, the victimisation and injustice narrative holds sway. Any serious theological input is viewed with growing impatience and embarrassment. Theology is seen to get in the way of real life. The little theological context there is focuses on love, acceptance, equality and justice. These issues have trumped any references to the holiness of God and the need for purity and obedience in His church.

The second significant motion passed during that session of Synod was one which requested the Bishops to consider proposals for liturgical recognition of the new identity of transgender people. Again, this received a two-thirds majority in all three houses, which means, like the vote on ‘conversion therapy’, that a number of evangelicals and particularly those who identify as ‘evangelical bishops’ voted for the motions. As we know, the Bishops did indeed consider and approve the proposal over a year later – more of this below.

**Scenario 4: ‘Where the Church changes its doctrine or discipline to a position that is not biblical.’**

Respected philosopher, theologian and cultural commentator Carl Trueman responded to the approval of transgender liturgies in this way:<sup>9</sup>

And so we have this liturgical proposal which, as with all liturgies, tells us a lot about the General Synod’s understanding of its church’s purpose. It points toward a view of the Church as offering a religious idiom for the therapeutic concerns of modern Western society. So far, so conventional.

But the proposal is actually far more sinister than the usual capitulation to the latest sexual hobby-horse. What is missing in this doubtless well-intentioned move is any reflection upon the deeper philosophical implications of transgenderism. To treat it as yet one more legitimate human choice, which can be included in the pantheon of human freedoms, is to miss the real issue. Transgenderism challenges traditional notions of human personhood at the deepest level.

In December 2018, the Bishops approved the use of the service for re-affirmation of baptismal vows to ‘mark a person’s gender transition’. Gafcon UK responded with a statement, saying:<sup>10</sup>

this is a grave misuse of a sacrament which should refer only to a person’s conversion to Christ and not to celebrate their own identity. The perception in many quarters, including large parts of the Anglican Communion, is that the Guidance does indeed [despite denials to the contrary by the Archbishop of Canterbury’s spokesman] represent a novel theological position on issues of sex and gender.

8 <https://www.gafcon.org/news/fundamental-shifts-in-the-general-synod>.

9 <https://www.firstthings.com/web-exclusives/2017/07/the-church-of-englands-nietzschean-proposal>.

10 <https://gafcongb.org/comment-follow-statement-church-england-re-liturgies-mark-gender-transition>.

The transgender guidance was greeted with dismay by many in the Church of England. A petition to reverse the decision was signed by more than 3000 clergy and laity. There was apparently little opposition among ‘evangelical’ Bishops; the Guidance had been signed off by the President of the Church of England Evangelical Council (CEEC), Julian Henderson. This led to a tense meeting of CEEC<sup>11</sup> in January 2019 in which Bishop Julian explained that he had not had time to familiarise himself with the theological arguments; he along with other Bishops were persuaded that this was just a way of offering pastoral care to a small number of people with gender dysphoria. Only one member of CEEC called for his resignation. Bishop Julian later apologised, and a detailed statement clarified CEEC’s opposition to the bishops’ Guidance.

As a result of this liturgical innovation, which rested on a clear denial of biblical anthropology, a small number of clergy began to prepare to leave the Church of England in order to establish an alternative Anglican witness outside the Church of England. One example can be seen in this video,<sup>12</sup> where Rev Philip de Grey-Warter explains his decision.

Although the ‘transgender liturgy’ was the tipping point for clergy like Rev de Grey-Warter, it was at the time the latest in a long line of heterodox actions by the Church of England leadership. Official changes to doctrine may not have taken place, but if they are routinely ignored, one could argue that Canons and liturgy have become like the Maginot Line: fortifications which do not prevent transgression of boundaries, as revisionists can simply walk around them, leaving them intact but irrelevant.

The method perhaps most commonly used is the setting up of processes of ‘conversations’ around sexual ethics. These are based on certain assumptions. Firstly, that while historic doctrines remain in place, it is acceptable to question and challenge their validity. Secondly, that the visible unity of the institution of the Church is of paramount importance as a demonstration of how those with different views love one another. Thirdly, that since there is no agreed theological method by which Anglicans come to different conclusions on these issues, some if not most doctrine must be seen as provisional, and can be changed if there is consensus to do so. Fourthly, that there is a missional imperative for the church in not appearing to be pastorally cruel, out of touch, irrelevant and divided. The aim of ‘conversations’ around sex and marriage, then, is not to arrive at a common mind on issues of truth based on shared understanding of Scripture, but to negotiate a space where those with different views can live together in peace.

**Scenario 5: ‘Where a Bishop disciplines a clergyperson for acting consistently with the doctrine of the Church.’**

There have been several high-profile examples of clergy experiencing conflict with local secular authorities for promoting orthodox Christian doctrine, who have not received backing from the Bishop and the Diocese. This has become a particular problem in Church of England schools. In a number of cases, clergy have been asked to stand down from school governance boards, been ‘de-platformed’ from speaking at assemblies, and told not to protest when a school asks a radical transgender lobby group to direct its inclusion policy – and, in

<sup>11</sup> The author was present at this meeting.

<sup>12</sup> <https://www.gafcon.org/news/statement-from-revd-philip-de-grey-warter>.

each case, the Diocese has backed the school rather than the vicar.<sup>13</sup>

In October 2018, the four Bishops in Oxford Diocese issued a long pastoral letter,<sup>14</sup> in which they set out parameters for ‘radical inclusion’ of LGBTIQ+ people in the Church. There should be no ‘intrusive questioning’ of lifestyles, no restriction of access to sacraments, no barriers to leadership for LGBTIQ+ people, they said. They announced the setting up of a new chaplaincy dedicated to supporting gay and trans people. The doctrine of the Church would not be changed, they claimed, but in carefully constructed language, the Bishops effectively warned clergy against ways of teaching and offering welcome, pastoral care and the opportunity of discipleship guided by the Church’s official doctrinal position. Once again, historic teaching in theory underpins the governing formularies of the church, but in practice it is seen as one optional belief among many, which must be used with care as it may create pastoral and even legal difficulties for those publicly expressing it.

This above survey, though not exhaustive, is intended to be comprehensive enough to show by reference to numerous examples in recent history, that Bishops remain in post who have publicly refuted the historic doctrines of the Church on sex and marriage; that Bishops have on many occasions failed to act when clergy violate these doctrines; have failed to support clergy who find themselves under attack for adhering to this teaching; and even warned clergy about potential negative consequences of orthodoxy. Synods have passed resolutions contrary to biblical teaching, and while strictly speaking liturgy may not have been changed, episcopal guidance has been issued giving permission for liturgy to be used in ways which indicate acceptance of secular humanist ideology.

## The line has been crossed: The response of the orthodox

My hope is that the Anglican Church of Australia will remain faithful to the historic teaching of the Church on sex and marriage, and resist calls to change this teaching and compromise with contemporary secular culture. It may be that for those who share this hope, there are lessons to be learned from recent events in the Church of England as detailed above, and so I conclude by offering these final observations.

1. The evidence shown in the above survey warns us that a church may have ‘crossed a line’ into error, perhaps even repeatedly, even if official formularies remain orthodox. Those wanting to resist change must be vigilant and realistic about the church’s ‘working theology’<sup>15</sup>, i.e., what is actually taught in pulpits, practised in lives and agreed in Synod motions on the ground, rather than complacently trusting that as long as canons and liturgies do not obviously change, all is well.
2. The relative success of theologically orthodox churches, particularly the evangelical wing, does not guarantee that the denomination as a whole will remain

13 A report on a high profile example can be found here: <https://anglicanmainstream.org/c-of-es-ideological-capitulation-makes-more-clergy-resignations-inevitable/>.

14 See here for the letter, and responses, including a letter of protest from the Oxford Diocesan Evangelical Fellowship: <https://anglicanmainstream.org/oxford-diocese-promotes-inclusion/>.

15 Philip Turner, *An unworkable theology*, 2005 <https://virtueonline.org/unworkable-theology-philip-turner-O>.

faithful to Scripture. In England, the *de facto* gradual abandonment of orthodoxy, especially in the area of sexual ethics, has occurred during a time of growth for churches which hold to the authority of Scripture and who preach the gospel of Christ. There may be several reasons for this. A focus on local church ministry has sometimes allowed Diocesan and national church structures to be occupied by those with heterodox views. Orthodox leaders preferred for higher office too easily become wishy-washy, either from desire for power and popularity, or exhaustion from constant battles behind the scenes. And gospel-hearted churches and their leaders may simply not want to get involved in antagonistic and reputation-damaging ‘contending for the faith’. But it should not be assumed that orthodox Anglicans will inevitably prevent change simply by appeal to numbers and resources.

3. An understanding of the ‘big picture’ helps us put these church disputes into context. The question about sexual ethics in the Anglican Church is part of a much wider revolutionary change in Western culture, where widespread acceptance of a God-given order has given way to a new understanding of reality based on the perceptions of the individual self. In the face of this worldview shift, it is not longer enough to argue ‘the Church teaches...’ or ‘the Bible says...’, because traditional understandings based on these appeals, no matter how carefully and winsomely expressed, are now seen by the majority in society as restrictive and even harmful. It is my view that conservatives in the Church of England have not hitherto given this cultural background sufficient attention.

4. The orthodox position can be strengthened by gathering widespread agreement on a course of action according to the unfolding of various scenarios, i.e., ‘if the Church does this, we will do this’. In the early 2000s the orthodox in the Church of England began to do this, but the coalitions broke down later, as different constituencies pursued their own strategies. Instead, it would be better if those committed to preserving the historic teaching of the Church could agree on where the lines are being crossed or may be in danger of being crossed, perhaps according to the scenarios set out by Gafcon Australia’s ‘Commitment 2020’ document. Strategies for opposing change within the structures of the Church can be drawn up, which must include various options for ‘differentiation’ from false teaching, and even the formation of alternative Anglican jurisdictions.<sup>16</sup> If such commitment to action does not happen, experience in England shows that many bishops know that if they actively promote revisionism or turn a blind eye to it, the most they have to fear are some private letters of complaint, and perhaps a delegation of half a dozen clergy for a polite chat in the study. There is no comparison with the pressure they will be facing from the LGBTIQ+ lobby. Meanwhile, individual clergy whose conscience begins to question whether they can continue to serve in such an institution, find that if they resign and look to establish a new ministry outside the Church of England, there is no agreed pathway from the leadership of their

16 The Anglican Network in Europe, authorised by Gafcon, was formed in 2020, with very little support from the majority of orthodox Church of England leadership. <https://www.anglicannetwork.org/>.

networks within the Church of England to facilitate this.

5. I acknowledge that my analysis could be accused of being unduly pessimistic. However one can be pessimistic about the trajectory of Canterbury-aligned Western Anglicanism, but optimistic about majority-global-south orthodox Anglicanism. The development of Gafcon has been a game-changer, recognising the new potential of genuine mission partnership where the previously dominant Christian West now learns and serves with humility alongside the church of the disadvantaged. This will have an impact not just for our conservative church networks, but for the future of world Christianity.

## APPENDICES





## i. Opinion of Ms Gillian Davidson

### Part 1 – Background

#### Questions before the Tribunal

1. The current matter arises due to two separate referrals under section 63(1) of the Constitution of the Anglican Church of Australia (**Constitution**) made on 5 September and 21 October 2019 (**Referrals**). The questions relate to the *Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019* (Wangaratta) (**Regulations**), which purport to be made under the *Canon Concerning Services 1992*, in the form adopted in the Diocese of Wangaratta (**Wangaratta**).
2. The 5 September 2019 referral provides as follows:

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

*On 5 September 2019 the Primate referred to the Appellate Tribunal the following questions:*

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

*The following questions arising under the Constitution are referred to the Appellate Tribunal:*

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

3. The 21 October 2019 referral provides as follows:

***Referral to the Appellate Tribunal at the request of the 25 Members of General Synod***

***Blessing of persons married according to the Marriage Act 1961 Regulations 2019 (Diocese of Wangaratta)***

*On 14 October 2019 the Primate received a request from 25 members of General Synod that he refer questions to the Appellate Tribunal in relation to the Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019 (Diocese of Wangaratta)*

*On 21 October 2019 the Primate referred to the Appellate Tribunal the following questions:*

- *Whether the use of the form of service at Appendix A to the Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019 made by the Synod of the Diocese of Wangaratta to bless a civil marriage which involved a union other than between one man and one woman, is consistent with the doctrine of this Church and consistent with the Fundamental Declarations and Ruling Principles in the Constitution of the Anglican Church of Australia.*
- *Whether the use of any other form of service, purportedly made in accordance with section 5 of the Canon Concerning Services 1992, to bless a civil marriage which involved a union other than between one man and one woman is consistent with the doctrine of this Church and consistent with the Fundamental Declarations and Ruling Principles in the Constitution of the Anglican Church of Australia.*
- *Whether, in light of the determinations to be made in Questions 1 & 2, the Regulations are validly made pursuant to the Canon Concerning Services 1992.*

4. The Tribunal determined to consider both referrals concurrently.

### **Jurisdiction of the Tribunal**

5. The jurisdiction of the Tribunal under section 63(1) of the Constitution extends to any question which is properly referred to the Tribunal and which “arises under this Constitution”.
6. I note that the submissions made by the Wangaratta and the Archbishop of Perth contended that the current Referrals were not matters arising under the Constitution. I find this position difficult to accept given that the Regulations purport to be made under, and to draw legislative authority from, a Canon of General Synod; namely, the *Canon Concerning Services 1992*.
7. Accordingly, I agree that the questions referred on 5 September and 21 October 2019 have been properly made and comprise questions which arise under the Constitution.

### **What material can the Tribunal consider?**

8. The Regulations purport to be made under the *Canon Concerning Services 1992*. That Canon is to be interpreted in accordance with Rule XIX as follows:

#### *XIX. RULE RE INTERPRETATION 1*

*Section 74 of the Constitution shall apply to the canons the rules and Standing Orders of Synod unless the context or subject matter thereof indicates the contrary.*

9. Section 74(7) of the Constitution provides that:

*(7) This Constitution shall, unless the context or subject matter otherwise indicate, be construed as if the Acts Interpretation Act 1901-1948 of the Parliament of the Commonwealth of Australia applied to this Constitution.*

10. The Appellate Tribunal in its 2 November 1989 Report<sup>1</sup> agreed with the proposition that the *Acts Interpretation Act 1901-1948* (Cth) (**1948 Act**) applied in the form it existed in 1948, but that that Act did not limit the materials available to the Tribunal in forming its opinions:

*The Tribunal is not a court in the strict sense. It is set up by General Synod under the authority of various Acts of State and Territorial Legislatures. The Tribunal is both an expert Tribunal on ecclesiastical matters and a Tribunal in part composed of lawyers who would be expected to approach questions of construction of Statutes in a similar way to a court....*

*In the Tribunal's view, it can, subject to the rules of natural justice, inform itself of all matters necessary for its determination in any way it seems fit. See *Australian Workers' Union v Bowen* (No 2) (1948) 77 CLR 601, 628.*

*In questions as to the proper interpretation of the Constitution the Tribunal considers that it is appropriate to act upon the history of the Church, and within limits, the earlier drafts of the Constitution to assist it in construing the Constitution.<sup>2</sup>*

11. Accordingly, I have adopted the approach of examining both the text of the Regulations, the *Canon Concerning Services 1992* and the Constitution in their own right and also in the historical context in which were enacted.
12. In addition, I have reviewed a wide variety of materials. These materials have included the large number of submissions made to this Tribunal and the unanimous opinions of the House of Bishops and of the Board of Assessors. I have also been assisted by "*The Principles of Canon Law common to the churches of the Anglican communion*" (*Principles*) which is the product of the work of the Anglican Communion Legal Advisers Network convened in 2002 following the meeting of the Primates of the Communion in 2001 and published by the Anglican Communion Office in 2008. While the Convenor of the network in the Preface stated that the aim of *Principles* is to "inform, not to oblige". I have found it persuasive that the *Principles* emerged from the work of 30 lawyers from 17 provinces of the churches of the Communion who worked off a body of 50 or so principles developed by Norman Doe, author of "*Canon Law in the Anglican Communion*".<sup>4</sup>
13. Principles 1-3 of *Principles* contain statements that are highly relevant to the Referred Questions. Set out below are those statements in Principles 1-3 which are most pertinent:

1 Report and Opinion of Tribunal on the "Ordination of Women to the Office of Priest Act 1988" of the Synod or the Diocese of Melbourne, dated 2 November 1989, pages 6-7 (the **1989 Report**).

2 1989 Report, *ibid* pages 6-7.

3 Anglican Communion Legal Advisers' Network, "*The Principles of Canon Law common to the churches of the Anglican communion*", Published by The Anglican Communion Office, London, UK (2008).

4 Norman Doe "*Canon Law in the Anglican Communion: A Worldwide Perspective*", Oxford University Press, Oxford, United Kingdom (1998).

***Principle 1: Law in ecclesial society***

1. *Law exists to assist a church in its mission and witness to Jesus Christ.*
2. *A church needs within its laws to order, and so facilitate, its public life and to regulate its own affairs for the common good.*
3. *Law is not an end in itself.*

***Principle 2: Law as servant***

1. *Law is the servant of the church.*
2. *Law should reflect the revealed will of God.*
3. *Law has a historical basis and a theological foundation, rationale and end.*
4. *Law is intended to express publicly the theological self-understanding and practical policies of a church.*
5. *Law in a church exists to uphold the integrity of the faith, sacraments and mission, to provide good order, to support communion amongst the faithful, to put into action Christian values, and to prevent and resolve conflict.*

***Principle 3: The limits of law***

1. *Laws should reflect but cannot change Christian truths. ...*
6. *Some laws articulate immutable truths and values.*<sup>5</sup>

14. With the above interpretative framework, I now turn to examine the content of the Regulations.

**What do the Regulations authorise?**

15. The Regulations attempt to mandate a form of service where a minister is asked to and agrees to conduct what is called a 'Service of Blessing' for persons who have already been married in accordance with the *Marriage Act 1961* (Cth):

***Form of Service***

4. *Where a minister is asked to and agrees to conduct a Service of Blessing for persons married according to the Marriage Act 1961 the minister will use the form of service at Appendix A to these Regulations and no other form of service.*<sup>6</sup>
16. The Regulations do not limit the use of the service to heterosexual civil marriage. The Regulations expressly contemplate that the service may be used in circumstances which give rise to questions of conscience:

<sup>5</sup> See above Footnote 3, page 19.

<sup>6</sup> Regulations, Section 4.

*Conscientious Objection*

5. *No minister will be compelled to assent to conducting such a service if to do so would offend their conscience.*
6. *Where a minister has a conscientious objection to conducting such a service, that minister may refer the couple seeking such a blessing to a minister who is willing and able to conduct the service.*<sup>7</sup>
17. Accordingly, the drafters of the Regulations expected that the use of the service could be contentious and may give rise to conscientious objections.
18. The Tribunal accepts that it is currently unlawful for same sex unions to be solemnised. The current state of the law is consistent with the current doctrine of the Church that marriage is only permitted between one woman and one man
19. Further, the Bishops Agreement of March 2018 acknowledged:

*“If we as a Church are to change this doctrine to permit same-sex marriage, the appropriate mechanism is through the framework of the Constitution and Canons of the Anglican Church of Australia. ... The bishops commit to working together to manifest and maintain unity, as we together discern the truth.” (paragraph 1 of the Bishops Agreement)*<sup>8</sup>

and

*“The bishops commit to act within the framework of the Constitution and Canons of this Church, and to encourage those under their episcopal oversight to do so.” (paragraph 2).*<sup>9</sup>

20. Wangaratta’s submission also acknowledges that the Church’s teaching is that marriage is expressly confined to marriage between a man and a woman:

*The Church’s teaching on marriage*

53. *The Church’s teaching on marriage is to be found in its forms of service for marriage, most particularly in the BCP, and in the three Canons of General Synod dealing with the question of matrimony. It can also be found in codes of conduct such as Faithfulness in Service which contain advice or directives about sex and intimacy within marriage. None of the 39 Articles deal expressly with marriage.*
54. *The BCP marriage service is expressly confined to marriage between a man and a woman. There is no authorised Anglican rite for any form of Christian marriage other than a marriage between a man and a woman. The General Synod, in exercising its powers under section 26 of the Constitution, has expressed the view that marriage is between a man and a woman.*<sup>10</sup>

7 Regulations, Section 5 and 6.

8 As reported by The Melbourne Anglican, “Bishops’ pledge on SSM rite” on 5 May 2018, pages 1-2.

9 The Melbourne Anglican, Ibid.

10 Primary submission by the Synod of the Diocese of Wangaratta dated 8 November 2019, paragraphs 53-54.



21. Wangaratta additionally submits that the ‘Service of Blessing’ authorised under the Regulations:

- 9.1. is not a marriage service;*
- 9.2. is confined for use where the persons involved are not already married in a Christian service;*
- 9.3. does not purport to give the civil marriage that has previously occurred the status of Christian marriage;*
- 9.4. is a service blessing the persons in the civil marriage; and*
- 9.5. does not specify the sex of the persons who have been married.<sup>11</sup>*

22. On this last point, Wangaratta acknowledges that the ‘Service of Blessing’ is intended for use in the blessing of same-sex civil unions:

*59. Whether dealing (as this reference does not) with a form of service purporting to solemnise a marriage according to Christian rites, or whether (as here) with a form of blessing only, the Tribunal can adopt this reasoning with respect to the blessing of civil marriages, including same sex marriages: to the extent that the BCP marriage rite provides for only marriages between men and women, that can be seen as reflecting the reality of the common law position and attitudes extending well beyond the Church rather than being derived from any doctrine. At the time the BCP was prepared, there was no possibility of same sex marriages, and no “civil marriage” in the sense of ceremonies conducted other than by priests.<sup>12</sup>*

23. This position is consistent with that outlined by The Revd Canon Professor Dorothy Lee in her address to the Synod of Wangaratta, who made clear that the intent of the Regulations is to provide a service of blessing for both heterosexual and same sex civil unions:

*What of gay and lesbian couples? Currently, they cannot marry in our church. The Bishops have confirmed that current church teaching says that marriage can only be between male-female couples.... Since Australia legislated for full marriage equality in 2017, the avenue of blessing same-sex unions needs to be seriously considered.<sup>13</sup>*

24. For these reasons, I have proceeded on the basis that the Regulations are intended to be used with respect to same-sex civil unions.

<sup>11</sup> Synod of the Diocese of Wangaratta, *ibid*, paragraph 10.

<sup>12</sup> Synod of the Diocese of Wangaratta, *ibid*, paragraph 59.

<sup>13</sup> The Blessing of Civil Unions Address to the Synod of Wangaratta, 31 August 2019; a copy of which was submitted by the Synod of the Diocese of Wangaratta as an attachment to its primary submission of 8 November 2019.

## Separate Opinion

25. I have had the advantage of carefully considering the significant draft majority opinion that has been prepared, reviewed and discussed by the members of the Appellate Tribunal. In addition, I have been assisted by the responses from the House of Bishops and the Board of Assessors. I have determined that my best response to the opinion of the majority are the reasons contained in this separate opinion.
26. I know that this separate opinion will cause unease and pain to some, particularly to those who have felt saddened, denied or malnourished by their experience of the church. I lament any pain in the same way I lament having to break the news of a hard or difficult truth to someone I love. And yet I do so trusting that the word of God is for our good, and mindful that God is a merciful God who delights to bless his people graciously and faithfully and the opinions of this Tribunal will not alter that fact.

## Executive Summary

27. I have concluded that the Regulations are invalid for the following reasons:
  - a. The Regulations are inconsistent with the Fundamental Declarations as:<sup>14</sup>
    - i. The doctrine of the Church is that marriage is only permitted between one woman and one man;
    - ii. Scripture teaches that same sex practice is not permitted; and
    - iii. The witness of the Church Universal is opposed to same sex practice;
  - b. The Regulations are inconsistent with the Ruling Principles as:<sup>15</sup>
    - i. The Regulations are contrary to the Fundamental Declarations and therefore also the Ruling Principles (Article XX);
    - ii. The Regulations seek to bless same-sex civil unions which would not qualify for Christian marriage, as such civil unions are contrary to the church's teaching on marriage;
    - iii. The Regulations seek to bless sinful practice, contrary to the Church's teaching that persistence in sexual immorality endangers salvation; and
    - iv. The Regulations contravene the principle that our practice and worship should be consistent in furtherance of the good order of the Church;
  - c. The Regulations are not validly made under the *Canon Concerning Services 1992* as:<sup>16</sup>
    - i. The Regulations are contrary to the doctrine of the Church; and

14 See Part 2 of this Opinion.

15 See Part 3 of this Opinion.

16 See Parts 4 and 5 of this Opinion.

- ii. The Canon does not empower a Synod to make Regulations and the Synod of Wangaratta does not otherwise have power to make regulations with respect to non-temporal matters by virtue of the *Church of England Act 1854* (Vic).

### Approach to previous opinions of the Tribunal

28. The current Referrals have required an examination of earlier Tribunal reports regarding the meaning of the word ‘doctrine’ under our Constitution, most notably the 1985<sup>17</sup> and 1987 Reports.<sup>18</sup> I have examined those reports in detail and applied the majority opinions of each report on that question.

29. For the 1985 Report, that majority comprises the joint opinion of Archbishop Rayner, Bishop Holland, and Justices Young and Tadgell who found that a principle of doctrine means:

*a fundamental truth or proposition on which many others depend.*<sup>19</sup>

30. For the 1987 Report, that majority comprises the opinion of Bishop Holland, Justices Young and Tadgell (who each affirmed their opinion stated in 1985), and either:

a. Justice Cox, who favoured a broader test of ‘principle’ as being:

*A general law or rule adopted or professed as a guide to action; a settled ground or basis of conduct or practice; a fundamental reason of action, esp. one consciously recognized and followed. (Often partly coinciding with sense 5 – viz. Fundamental truth or proposition, on which many others depend ... );*<sup>20</sup> or

b. Archbishop Robinson, for whom the Ruling Principles did not allow any departure:

*even in a limited way, from the doctrine and principles of the Church of England retained and approved by this Church*<sup>21</sup>

31. The majority opinion in the current matter has sought to apply the minority<sup>22</sup> opinions of Archbishop Rayner<sup>23</sup> and Justice Handley in the 1987 Report on the question of the

17 Opinion of the Appellate Tribunal, Ordination of Women, dated 14 August 1985 (the 1985 Report).

18 Report of the Appellate Tribunal re Ordination of Women to the Office of Deacons Canon 1985 (the 1987 Report).

19 1985 Report, see above footnote 17, page 4.

20 1987 Report, see above footnote 18, page 27.

21 1987 Report, *ibid*, page 63.

22 Whilst the opinions of Archbishop Rayner and Justice Handley formed part of the majority on the questions before the Tribunal in the 1987 Report, their respective views on the meaning of ‘doctrine’ in the Constitution were minority views.

23 Justice Cox stated that he was in ‘general agreement with the additional reasons, with respect to Chapter I, that have been prepared by the Archbishop of Adelaide for the purpose of the present reference’ (1987 Report, *ibid* page 14); however, the Ruling Principles are contained in Chapter II, so Justice Cox did not support Archbishop Rayner’s position on the Ruling Principles as is evident an examination of his opinions (see discussion in paragraphs 128-138 below). Justice Cox expressly dissented from the majority opinion in the 1985 Report on the application of the Section 4 of the Constitution (see above footnote 17, page 4). See generally the discussion of Justice Cox’s position in paragraphs 128-138 below.

meaning of ‘doctrine’ under the Constitution. I have adopted a different interpretation of, in particular, the Statement of Archbishop Rayner that:

*“Doctrine” must therefore be understood in the Constitution as the Church’s teaching on the faith which is necessary to salvation.*<sup>24</sup>

32. The majority applies the phrase ‘which is necessary to salvation’ as qualifying the word ‘teaching’ and therefore constraining its meaning.
33. I consider that this is a misunderstanding of what Article VI of the 39 Articles of Religion (**39 Articles**)<sup>25</sup> (upon which Archbishop Rayner is relying) means by the phrase that “Holy Scripture containeth all things necessary to salvation”.
34. Read in context, I consider that the phrase ‘which is necessary to salvation’ must qualify the word ‘faith’ rather than the word ‘teaching’. Archbishop Rayner immediately goes on to state:

*That faith is grounded in scripture and set out in the creeds; and the Church’s doctrine or teaching on that faith may be explicated and developed, provided it is always subject to the test of scripture. For reasons already advanced, I do not see the limitation of ordination to males as required by scripture, nor is it referred to in the creeds. (emphasis added)*<sup>26</sup>

35. So, for Archbishop Rayner, doctrine is that which is taught by the Church about the faith which is not inconsistent with Scripture or the creeds; within that, some doctrine may be further explicated or developed provided that it is not inconsistent with Scripture. That it is possible for doctrine – in Archbishop Rayner’s view – to develop does not mean it is not ‘doctrine’ within the meaning of the Constitution.
36. Viewed in context, the interpretation placed by the majority on Archbishop Rayner’s statement is one with which I cannot agree. If doctrine is only that teaching which is necessary for salvation, and if, as Article VI requires, Scripture contains everything necessary for salvation, then why would Archbishop Rayner state that “doctrine or teaching on that faith may be explicated and developed, provided it is always subject to the test of scripture”?
37. By contrast, I have found that Archbishop Rayner is distinguishing between doctrine which is an expression of Scripture and the creeds (and hence eternal) and other doctrine which may develop in a manner not inconsistent with Scripture. I have understood Archbishop Rayner to be outlining a position which envisages that a definition of doctrine can extend beyond Scripture and could be based on reason, tradition or experience, as long as that extended definition is not inconsistent with Scripture.

24 1987 Report, see above footnote 18, page 49.

25 References to the ‘39 Articles of Religion’, the ‘39 Articles’ or ‘Article’ in this Opinion refer to “The Thirty Nine Articles of Religion, Agreed upon by the Archbishops, Bishops, and the whole clergy of the Provinces of Canterbury and York, London, 1562”, referred to as the ‘articles of religion’ in Section 74(3) of the Constitution.

26 See above footnote 24.

## What is the place of the Constitution?

38. The Constitution is a significant achievement in the life of the Church in Australia. It defines both the basis for our unity and the limits to which we may diverge on matters of controversy, including making divergent pastoral allowances for local circumstances where appropriate. As such it is both a symbol of our unity and coherence as a body of believers and also a means by which we continue in communion despite our different views or circumstances.
39. In this way the Constitution reflects the Apostle Paul's understanding of the Church, where our unity is first of all founded and derived in the Lord Jesus Christ:

*The Son is the image of the invisible God, the firstborn over all creation. For in him all things were created: things in heaven and on earth, visible and invisible, whether thrones or powers or rulers or authorities; all things have been created through him and for him. He is before all things, and in him all things hold together. And he is the head of the body, the church; he is the beginning and the firstborn from among the dead, so that in everything he might have the supremacy. (Colossians 1:15-18)*

40. This unity is a work of God the Father achieved through Christ's death on the cross:

*For God was pleased to have all his fullness dwell in him, and through him to reconcile to himself all things, whether things on earth or things in heaven, by making peace through his blood, shed on the cross. (Colossians 1:19-20)*

41. For Paul, this knowledge that "in Christ all the fullness of the Deity lives in bodily form, and in Christ you have been brought to fullness" and that "He is the head over every power and authority" (Colossians 2:9-10) guards the Church against being taken "captive through hollow and deceptive philosophy, which depends on human tradition and the elemental spiritual forces of this world rather than on Christ" or being deceived "by fine-sounding arguments." (Colossians 2:4; 2:8)
42. The Apostle appreciated that our unity as Christians could not be taken for granted and required believers to actively pursue that unity in good works, forgiveness and forbearance:
- Therefore, as God's chosen people, holy and dearly loved, clothe yourselves with compassion, kindness, humility, gentleness and patience. Bear with each other and forgive one another if any of you has a grievance against someone. Forgive as the Lord forgave you. And over all these virtues put on love, which binds them all together in perfect unity. (Colossians 3:12-14)*
43. Thus, despite the fact that the adoption of our Constitution followed decades of labour, disagreement, distrust, dispute, and that it required an intervention by the Archbishop of Canterbury before eventually being accepted by the whole Church, it flowed from a determination to express and enjoy unity.
44. Matters prominently under dispute in the evolution of the Constitution concerned the respective authority of the individual dioceses and the General Synod, the flexibility of the Constitution to allow variations especially in worship, the powers and membership of the Appellate Tribunal, the ongoing connection with the courts and canons of the



Church of England ('the nexus'), the autonomy of the Church and its ability to speak with its own voice and even the capacity to unite with other churches.<sup>27</sup> There was fear on the one hand that the will of the majority would be forced on the minority, and that the Church would change its position and hence its identity on matters of strong theological and liturgical moment. On the other hand, there was an equal fear that the autonomy of the church would be always compromised and that the views of the minority would prevent the advent of necessary change.

45. At every point of this process, there was one chief issue, namely the statement of the fundamental authority which would determine the identity of the Church. What was that authority? Where could it be found? How was it to be interpreted? How was it to be safeguarded?
46. This was the issue which drove many of the discussions and provoked the difficulties on which attempts to create the Constitution foundered. To use one practical example, there were those who, to the very end, wanted the 39 Articles and the Book of Common Prayer (BCP)<sup>28</sup> to be included in the Fundamental Declarations. Others, fearful that this would inhibit all change, preferred them to appear amongst what became known as the Ruling Principles. It took a concession by some to allow for this and a concession by others which allowed the Articles and the BCP to be described as inhibiting any change inconsistent with their principles of doctrine and worship, for the Constitution to be agreed to.
48. To use two key illustrations about how the nature of the Constitution was formed by these considerations, we may refer to the Diocese of Adelaide and the Diocese of Sydney as two of the significant dioceses which had major difficulties with the Constitution, but ultimately acquiesced and accepted.
48. In the case of the Diocese of Adelaide, the problems revolved around the autonomy of the National Church. The Constitution was excessively rigid theologically, while being too devolved ecclesiologically. The sovereignty of the individual dioceses would hinder the development of the unity of the Church nationally. Adelaide was the last Diocese to approve the Constitution and it ensured that when it was brought into law by the State Government, there was inserted a provision by which Adelaide could withdraw unilaterally. The unity of the national church was put first, but with a proviso.

27 John Davis, *Australian Anglicans and their Constitution*, Acorn Press, Canberra (1993), see generally and, in particular, chapters 2 and 7.

28 References to the **Book of Common Prayer** or the **BCP** in this Opinion have the same meaning as in Section 74(2) which provides that:

In this Constitution "the Book of Common Prayer" means the Book of Common Prayer as received by the Church of England in the dioceses of Australia and Tasmania before and in the year of our Lord one thousand nine hundred and fifty-five, that is to say, the book entitled "The Book of Common Prayer and Administration of the Sacraments and other rites and ceremonies of the Church according to the use of the Church of England together with the Psalter or Psalms of David pointed as they are to be sung or said in churches and the form or manner of making ordaining and consecrating of bishops, priests and deacons," and generally known as the Book of Common Prayer 1662.



49. The arguments in Sydney more clearly revolved around the question of the power of the Fundamental Declarations and the Ruling Principles to recognise and safeguard what Archbishop Mowll referred to as 'the Protestant and Reformed character of the Church of England'. To the very end, including during the process of submitting the Constitution to the NSW Legislature, there were those who felt that the Constitution was not sufficient to ensure that identity for the Church. But the key factor in the acceptance of the Constitution by the Diocese of Sydney was reassurances of Archbishop Mowll:

*I would be failing in my responsibility as the Diocesan if I did not take every precaution necessary to safeguard the tradition of the Diocese.... We must, therefore, approach this matter, having in mind the welfare of the wider Church in Australia, of which we are the mother Diocese, and at the same time, with the determination that the point of view this Diocese represents should be both recognised and safeguarded,*<sup>29</sup>

and, even more significantly that of the senior theologian of the Diocese, Archdeacon T.C Hammond.

50. Hammond had expressed his support for the Constitution after achieving certain changes as a member of the Constitutional Committee. It was as a result of his conversations with the members of the committee from different parts of the Church, that he became convinced that the Constitution safeguarded the Protestant and Reformed nature of the Church. It is true that the Articles and BCP were not in the Fundamental Declarations, but he was persuaded that both the wording and the mechanism of the Constitution (eg the Appellate Tribunal and the need for special majorities of the General Synod to bring about all change) were more than sufficient to guard what Mowll called the Protestant and Reformed (the words are not synonymous) character of the Church.<sup>30</sup>
51. It was the voice of Hammond more than any other feature which secured the passage of the Constitution through Sydney and hence the acceptance of the Constitution by the Church as a whole Church. He did so by carefully and deliberately expounding the Constitution to reassure those whom he called 'Earnest Churchmen', who are, 'particularly anxious to know if the fundamental principles of the Church of England are maintained'. As he says, 'If the doctrine and principles of the Church are imperilled in any way all other provisions can well be regarded as inadequate to secure for the Church her time honoured position as a guardian of the truths of God. Does the Draft Constitution safeguard this position?' After considerable attention both to the wording of the Constitution and to the methods laid down in the Constitution to allow for changes while safeguarding the doctrine of the church (including 'the ordinary principles of interpretation employed in courts of justice'}, he declares that the Constitution 'protects the essential elements of the Catholic faith' and, 'retains her time-honoured standards of doctrine and worship as the norm of all further proceedings'.<sup>31</sup>

29 Archbishop Mowll's Address to a special session of the Sydney Synod, as reported in the Diocese of Sydney Year Book 1958, at page 202.

30 Ibid.

31 T C Hammond, 'Arguments in favour of the Draft Constitution', ms. held in the Moore College Library (undated).

52. Thus, by nature the Constitution embodies compromise and did not satisfy everybody. Some have concluded therefore, perhaps with good reason, that there were (and are) two churches within the Church, each endeavouring to be assured of achieving and safeguarding their purposes. In this view, the union is fragile and depends among other things, on the assurances of Mowll and Hammond to that group (not merely in one Diocese) who, while accepting the possibility of change, as in the new Australian Prayer Books, will always need to be persuaded by 'the ordinary principles of interpretation', both in law and theology, that the Catholic, Protestant and Reformed faith exemplified in the Scriptures as interpreted through the tradition of Creeds and Articles and Prayer Book, are not compromised.
53. However, the "two churches within the Church" is not a view supported by the proper construction of the Constitution. In the same way that St Paul would not have countenanced the concept of two separate churches of Christ in Colossae, neither does the Constitution. The key mechanism by which the Constitution maintains unity and coherence are the Fundamental Declarations (Chapter I) and the Ruling Principles (Chapter II).
54. In my opinion, a construction of the Constitution which results in one unified, coherent, body of believers, based on solid Apostolic foundations, must be preferred to a view which would allow different constituent parts of the Church to teach diametrically opposite positions on matters of salvation. To put it simply, it is incoherent for one Diocese to bless behaviours which the rest of the Church would condemn as risking salvation.
55. Those who point to previous decisions of the Appellate Tribunal on the much debated and considered issue of the ordination of women, whether to the Diaconate, the Priesthood or the Episcopacy, or Lay Administration of the Lord's Supper, as evidence that Church is not so fragile that it cannot embrace serious difference, would also be aware that the decisions have led to thirty years of deeply impaired communion in the Church. The recognition of Orders is one of the key unifying factors in any ecclesiastical fellowship. For the Orders of some not to be recognised in principle by others, with the practical consequences that follow, has created a strain that only good will has been able to tolerate. The present matter is, however, more significant and for that reason the Tribunal needs to be all the more careful to recognise the history and significance of the Constitution as it seeks to interpret its meaning. For what is at stake is whether, under our Constitution, one Diocese may unilaterally proceed to celebrate and formally bless sexual practice which is contrary to the teaching of the Church:

*Accordingly, the Anglican Church teaches that persistent, unrepentant sin precludes a person from God's kingdom. This is reflected in Article XVI and expressed in the way that confession and the assurance of forgiveness is enacted in the authorised prayer books. In the opening sentences before the general confession in BCP include Psalm 143:2. "Enter not into judgment with thy servant, O Lord; for in thy sight no man living be justified." The reality of God's judgment upon the unrepentant is clearly manifest, as a reminder to the congregation of the need to confess their sins.<sup>32</sup>*

32 House of Bishops Question 3, point 4.

56. In my opinion the Regulations are inconsistent with both the Fundamental Declarations and the Ruling Principles. It is inconceivable that any of the framers of the Constitution would have imagined that it would have allowed for such significant divergence from the teaching of Scripture as understood for nearly two thousand years. Such a change is highly contentious and divisive. It undermines our Constitution and threatens the unity of the Church.

## Part 2 – Fundamental Declarations

57. The Fundamental Declarations are set out in Chapter 1 of the Constitution as follows:

### *CHAPTER I. – FUNDAMENTAL DECLARATIONS*

1. *The Anglican Church of Australia, being a part of the One Holy Catholic and Apostolic Church of Christ, holds the Christian Faith as professed by the Church of Christ from primitive times and in particular as set forth in the creeds known as the Nicene Creed and the Apostles' Creed.*
  2. *This Church receives all the canonical scriptures of the Old and New Testaments as being the ultimate rule and standard of faith given by inspiration of God and containing all things necessary for salvation.*
  3. *This Church will ever obey the commands of Christ, teach His doctrine, administer His sacraments of Holy Baptism and Holy Communion, follow and uphold His discipline and preserve the three orders of bishops, priests and deacons in the sacred ministry.*
58. It has been claimed that the Fundamental Declarations “represents the fundamental truths of the Apostolic faith” in contrast to the Ruling Principles which, it is said, “represents the particular Anglican development of those truths.”<sup>33</sup>
59. However, this view is too narrow as the Fundamental Declarations themselves contain a thoroughly Anglican understanding of the place of the Church and the ultimate authority of Scripture.

### *The Christian Faith*

60. The Fundamental Declarations begin by placing the Church of England in Australia within ‘the one Holy Catholic and Apostolic Church of Christ’. This bold claim must not be ignored.
61. This Church is located as an element of the one true Church of Jesus Christ, Holy in that it belongs to him and seeks to do his will, Catholic in that embraces people from every quarter and is genuine, and Apostolic in the sense that it is based on the teaching of the Apostles and is thus in succession to those Apostles. It is a claim to identity,

33 Appellate Tribunal Opinion: Reference as to Deacons and Lay Persons Celebrating the Holy Communion, 24 December 1997, page 32 (Justice Bleby) (the **1997 Report**).

authenticity and to relationship: 'He can no longer have God for a Father, who has not the Church for a mother' (Cyprian}. If the Church of England in Australia were not part of the one, Holy, Catholic and Apostolic church, it would not be Christian church.

62. Such an assertion of identity, authenticity and relationships entails obligations. In particular, the obligation to hold the Christian Faith. By the word 'Faith' here, is meant the teaching or doctrine which is the substance of the Faith 'once and for all delivered to the saints' (Jude 3}.
63. 'The Faith' is a broad term which includes the whole counsel of God, both Law and Gospel as it has been revealed to us. But it is not the Faith simply as we may choose to conceive it: it is the Faith as professed by the Church of Christ from primitive times, and in particular as set forth in the Nicene and Apostles' Creed. That is to say, the teaching of the Church is rooted in history and the historic witness of those from the generation of the Apostles and the generations since.
64. The Creeds summarise and exemplify but do not exhaust the teaching of the Faith nor, as the Board of Assessors observe, do they "contain an entire summary of Christian belief in the early Church."<sup>34</sup> They do not say anything about the Holy Communion, for example. It is no accident that the 16th Century Reformers took great pains to show that what they were saying conformed not only with Scripture or the creeds as such, but also with the understanding of the Faith in the Patristic era. It is not the claim of the Church that she reads the Scriptures alone as if for the first time, but rather that she reads them within the tradition of many witnesses down through the ages.
65. Furthermore, in speaking of the Church as being part of the one, Holy Catholic and Apostolic Church, the Constitution is placing the Australian Anglican Church within that group of Churches which self-consciously trace their origins back to Apostolic times and see that the Faith has been truly declared in the two creeds. It is that Church which, according to section 7 of the Constitution has a historic custom of having as the see of a bishop, a diocese. Whatever the significant differences between these churches, they confess the one Triune Creator and Redeemer and the full deity and manhood of Christ, for example. Where differences occur, some of them being highly significant, the cause is in a different reading of the apostolic tradition as found in Scripture, for even the creeds themselves are subservient to this supreme authority.
66. Therefore, the Constitution insists simultaneously that 'Doctrine means that the teaching of this Church on any question of faith' and that 'Faith includes the obligation to hold the faith'. It is not open to a Church which wishes to remain one, Holy, Catholic and Apostolic Church, to lay aside elements of the Faith which forms part of the teaching of the Church, insofar as it has been based on Scripture, which is described in the next clause as 'the ultimate rule and standard of faith'. This is described as an obligation.

34 Board of Assessors, Question 1, paragraph 1(f).

67. This point is developed further by the Board of Assessors who conclude that:

*In summary, when speaking of the Faith of the Anglican Church, we insist that this includes matters of obedience as well as doctrine. This has been demonstrated in writings of the patristic era, debates in the Reformation era expressed through the Articles, the Book of Common Prayer, and the Homilies, twentieth century usages, all of which build on the Scriptural texts cited above.*<sup>35</sup>

68. S.Donald Fortson III and Rollin G. Grams have recently published a lengthy and detailed study, *Unchanging Witness: The Consistent Christian Teaching on Homosexuality in Scripture and Tradition*.<sup>36</sup> This contains the result of their careful study of Christian teaching from the beginning, and through the periods of the Fathers, the Medieval Church and the Reformation. They summarise their conclusions in these words:

*Both the teaching of the Bible and the teaching of the Christian tradition have uniformly taught the same thing: homosexual practice is sinful.*<sup>37</sup>

69. Wolfhart Pannenberg, one of most distinguished theologians of modern times, summarises the issue before us:

*Here lies the boundary of a Christian Church that knows itself to be bound by the authority of Scripture. Those who urge the church to change the norm of its teaching on this matter must know that they are promoting schism. If a church were to let itself be pushed to the point where it ceased to treat homosexual behaviour as a departure from the biblical norm and recognised homosexual unions as a personal partnership of love equivalent to marriage, such a church would stand no longer on biblical ground but against the unequivocal witness of Scripture. A church that took this step would cease to be the one Holy, Catholic and Apostolic church.*<sup>38</sup>

### ***The Holy Scriptures***

70. Section 2 of the Constitution is fundamental even to the Fundamental Declarations, for it gives supreme authority to the canonical Holy Scriptures, describing them, both Old and New Testament, as ‘the ultimate rule and standard of faith, given by inspiration of God and containing all things necessary for salvation’. The canonical books are defined in Article VI of the 39 Articles and thereby differ from those accepted by the Roman Catholic Church. This section depends on the Article for its definition and Article 6 for its wording, thus showing the interconnectedness of the Fundamental Declarations and the Ruling Principles.

35 Board of Assessors, Question 1, paragraph 1(m).

36 S. Donald Fortson III and Rollin G. Grams, *Unchanging Witness: The Consistent Christian Teaching on Homosexuality in Scripture and Tradition*, (B&H Academic, Nashville, 2016).

37 S.Donald Fortson III and Rollin G. Grams, *ibid* page 3.

38 Christianity Today, November 11th 1996, p 37.



71. In both cases, the words ‘given by inspiration of God and containing all things necessary for salvation’ are drawn from 2 Timothy 3:14-17:

*But as for you, continue in what you have learned and have become convinced of, because you know those from whom you learned it, and how from infancy you have known the Holy Scriptures, which are able to make you wise for salvation through faith in Christ Jesus. All Scripture is God-breathed and is useful for teaching, rebuking, correcting and training in righteousness, so that the servant of God may be thoroughly equipped for every good work.*

72. The inspiration of Holy Scripture finds expression in the phrase of Article XX, ‘God’s word written’.
73. The phrase ‘contains all things’ should not be construed as though the Scriptures also contain other things which are not necessary for salvation. The Scriptures are an integrated whole as a consequence of being ‘God’s word written’. Just as in the underlying scriptural text, the ‘able to instruct you for salvation through faith in Christ Jesus’ is not limited to the saving work of Christ on the cross and our acceptance of that by faith, but includes ‘reproof, correction, instruction unto righteousness’ so too in the Fundamental Declaration and the Article which it is quoting.

74. We can see exactly this usage in the contemporaneous Homily on Scripture, which says:

*We may learn in these books to know God’s will and pleasure, as much as, for this present time, it is convenient for us to know... As the great clerk and godly preacher, St John Chrysostom saith, whatsoever is required to salvation of man, is fully contained in the scripture of God... if it shall be required to teach any truth, or reprove false doctrine, to rebuke any vice, to commend any virtue, to give good counsel, to comfort or to exhort, or to do any other thing, requisite for our salvation, all these things, saith St Chrysostom, we may learn plentifully of scripture.<sup>39</sup> (*emphasis added*)*

75. Similarly, ‘salvation’ as used in Section 2 of the Constitution, should not be conflated with ‘justification by grace through faith’ so as to exclude the whole teaching of the Bible on human behaviour. On the contrary, as the Homily on Salvation makes clear:

*For how can a man have this true faith, this sure trust and confidence in God, that by the merits of Christ his sins will be forgiven, and he reconciled to the favour of God, and to be a partaker of the kingdom of heaven by Christ, when he liveth ungodly, and denieth Christ by his deeds? Surely no such ungodly man can have this faith and trust in God. For as they know Christ to be the only Saviour of the world; so also they know that wicked men shall not inherit the kingdom of God.<sup>40</sup>*

39 Book of Homilies, Book 1, Part 1, ‘A fruitful exhortation to the reading and knowledge of holy Scripture’.

40 Book of Homilies, Book 1, Part 3, ‘A Sermon of the Salvation of Mankind by only Christ our Saviour from sin and death everlasting’.



76. This position is stated clearly in James 2:14-19:

*What good is it, my brothers and sisters, if someone claims to have faith but has no deeds? Can such faith save them? Suppose a brother or a sister is without clothes and daily food. If one of you says to them, "Go in peace; keep warm and well fed," but does nothing about their physical needs, what good is it? 17 In the same way, faith by itself, if it is not accompanied by action, is dead.*

*But someone will say, "You have faith; I have deeds."*

*Show me your faith without deeds, and I will show you my faith by my deeds. You believe that there is one God. Good! Even the demons believe that—and shudder.*

77. In this way, the phrase 'containing all things necessary for salvation' cannot properly be construed as stating that only some of the Scripture has the authority of 'the ultimate rule and standard of faith'. Notably, Section 2 of the Constitution uses the word 'all', as it states that it receives all the canonical Scriptures for the rule and standard of (the) faith. Accordingly, the Biblical witness on matters of, in this case, sexual ethics cannot be diminished or narrowed.
78. The reach of the authority of Scripture is made even clearer in section 3, where the Headship of Christ over his Church is the focus. The solemn commitment of the Church to obey his commands (not merely trust his saving power), teach His doctrine, administer His sacraments of the Baptism and the Lord's Supper, uphold his discipline and preserve the three orders of ministry reveals that the Church is not free to break loose from the authority of Christ, including the obligation to maintain his discipline in the Church. Such discipline is integral to the liturgy and becomes an obligation of both priests and bishops in the ordinal to exercise, in accordance with the commands of Christ.
79. This obligation finds special expression in the administration of the Holy Communion, in which the Priest is to call any who is a 'notorious and evil liver' to repentance, and to be prepared to exclude them from the Holy Table, provided that he reports such an event to the Ordinary, so that further steps may be taken. In the BCP, the exhortation during the Holy Communion, in the course of which the Priest is to warn that 'if any of you be a blasphemer of God, an hinderer or slanderer of his Word, an adulterer, or be in malice or envy, or in any other grievous crime, repent you of your sins, or else come not to that holy Table'. Thus, it is clear that the discipline of the Church as expressed in the BCP would not be to bless a same-sex union, but rather to call for repentance.
80. Rightly, over the last decades there has been considerable effort made to see whether the biblical witness overall can be read in any other way than as opposed to same-sex unions. The conventional understanding of Scripture on any such subject needs to be thoroughly tested to ensure that it has been rightly understood down through the years. It has been generally accepted that the witness of the Church has been consistently opposed to same sex relations. But is this actually Scriptural?
81. Two significant voices are those of pre-eminent Church Historian Professor Diarmaid MacCulloch, Professor of the History of the Church at Oxford, and, as well, a renowned expert on the sexual attitudes in the ancient world, Professor William Loader, Emeritus

Professor of New Testament at Murdoch university. It is significant and persuasive that their personal views differ from the academic or theological conclusions they have reached on the biblical imperative in relation to sexual practice.

82. Professor MacCulloch writes:

*Protestantism is faced with an equally monstrous challenge to its assumption of authority: the increasing acceptance in western societies of homosexual practice and identity as one valid and unremarkable choice among the many open to human beings. This is the issue of biblical authority. Despite much well-intentioned fancy foot-work to the contrary, it is difficult to see the Bible as expressing anything else but disapproval of homosexual activity, let alone having any conception of homosexual identity. The only alternatives are to try to cleave to patterns of life and assumptions set out in the Bible, or to say that in this, as in much else, the Bible is simply wrong.<sup>41</sup>*

83. At the end of his survey of New Testament evidence, Professor Loader concludes:

*In this light it is not surprising that, as most conclude, Paul employs same-sex relations as a proof of human sinfulness and assumes people would then share the presuppositions which led him to that conclusion, however we might assess them today.<sup>42</sup>*

84. Of course there remain those whose use of Scripture is different. Professor Loader, for one believes that while exegesis leads inevitably to the conclusion given above, hermeneutics leads us in a different direction. He quotes those who point out that the Scriptures also contain the love command, and that in the light of modern understanding of sexuality it may well be the loving thing to do to allow or even encourage long term-committed, exclusive relationships between people of the same sex. The consideration of such a significant argument requires an examination of the Ruling Principles (see paragraph 112 below).

85. On the other hand, it is very difficult to maintain that the Bible and the commands of Christ or the witness of the Church Universal is anything else but opposed to same sex practice.

### *Are the Regulations inconsistent with the Fundamental Declarations?*

86. The Appellate Tribunal itself is subject to the Fundamental Declarations and must apply Scripture as the 'ultimate rule and standard of faith'. It is not open for the Tribunal to conclude that because different parts of the church may express different views regarding Scripture or doctrine, the Tribunal can elect either to not form a view as to the teaching of Scripture and doctrine or to not apply it. The Constitution provides a process under section 58 for the Tribunal to obtain the assistance of the House of Bishops and the Board of Assessors in circumstances where the Tribunal may lack unanimity on a question of doctrine.

41 Professor Diarmaid MacCulloch, 'Reformation', Allen Lane, London (2003), page 705.

42 Professor William Loader, 'Sexuality in the New Testament: Understanding the Key Texts', Westminster, John Knox Press (2010), page 34.

87. The unanimous views of both the House of Bishops and Board of Assessors is that Scripture teaches that homosexual practice is sinful, that persistent, unrepentant, sin threatens salvation and that such behaviour should not be blessed by the Church.
88. In response to the question “Question 4: Do you see any doctrinal impediment or difficulty with the baptism of a child of a same sex married couple according to one of the Anglican Church of Australia’s authorised rites, including the use of the prayer for the child’s parents?” the House of Bishops stated:

*Given the promises and commitments required of parents of children to be baptised, there is certainly a difficulty, if not an impediment, when the parents are living, without repentance, in a manner which is contrary to the faith and practice of the Church. (emphasis added)*<sup>43</sup>

89. In response to the same question, the Board of Assessors stated:

*a. In treating pastoral encounters such as this, we begin by recognising that Scripture does not condemn homosexual temptation. Temptation is not a sin; Jesus himself was tempted. So a particular person’s experience of ongoing same-sex attraction and temptation is not the issue at hand. Rather, Scripture condemns homosexual activity and the belief that it is morally permissible for any Christian. (emphasis added)*<sup>44</sup>

90. The House of Bishops affirmed that persistent, unrepentant, sin threatens a person’s salvation:

*2. Section 74(1) of the Constitution defines “doctrine” to mean “the teaching of this Church on any question of faith.” The relationship between teaching and doctrine is best explained by the reference in the Fundamental Declarations, that the ACA “will ever obey the commands of Christ and teach His doctrine”. Thus, the subject matter of the teaching of the Church is directly related to its doctrine. In other words, the doctrine of the ACA is its teaching, because the ACA must teach its doctrine, as it must teach Christ’s doctrine.*

*3. The corpus of teaching about sin, confession and persistence in sin is found primarily in Scripture, as understood within the framework of the Thirty-nine Articles and as expressed through its authorised liturgies.*

*4. Accordingly, the Anglican Church teaches that persistent, unrepentant sin precludes a person from God’s kingdom. This is reflected in Article XVI and expressed in the way that confession and the assurance of forgiveness is enacted in the authorised prayer books. In the opening sentences before the general confession in BCP include Psalm 143:2. “Enter not into judgment with thy servant, O Lord; for in thy sight no man living be justified.” The reality of God’s judgment upon the unrepentant is clearly manifest, as a reminder to the congregation of the need to confess their sins. (emphasis added)*<sup>45</sup>

43 House of Bishops, Question 4, paragraph 4.

44 Board of Assessors, Question 4, paragraph 4(a).

45 House of Bishops, Question 3, paragraphs 2-4.

91. The Board of Assessors confirmed that while the Church could offer private prayer to a same sex couple, focussing on common grace gifts such as peace, health, honesty, or generosity, it could not provide a blessing of the civil union:

*God pours out the rain on the just and the unjust, so any private prayer for same-sex married parents would focus on common grace gifts like peace, health, honesty, or generosity, but would not assume a blessing on their married state, for God cannot bless that which is named as sin.*<sup>46</sup>

92. The Regulations do not reflect Christian truth as understood by ‘the One Holy Catholic and Apostolic Church of Christ’ or as taught by Scripture.
93. I conclude, based on the reasons outlined above, that the Regulations are inconsistent with the Fundamental Declarations.

## Part 3 – Ruling Principles

94. Section 4 of the Constitution provides, relevantly, as follows:

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

*Provided, and it is hereby further declared, that the above-named Book of Common Prayer, together with the Thirtynine Articles, be regarded as the authorised standard of worship and doctrine in this Church, and no alteration in or permitted variations from the services or Articles therein contained shall contravene any principle of doctrine or worship laid down in such standard.”*

95. General Synod and Diocesan Synods have no authority or power to make canons, ordinances and rules which are inconsistent with the Fundamental Declarations and the Ruling Principles (Section 5 of the Constitution).
96. As can be seen from the discussion in part 2 above, the Fundamental Declarations rely closely upon an Anglican understanding of the place and authority of Scripture (in particular Article VI of the 39 Articles). In this way, the Fundamental Declarations set out an Anglican understanding of the Apostolic faith and how the Anglican Church fits within that faith; the Ruling Principles describe the Anglican expression of that Apostolic faith.

46 Board of Assessors, Question 4, paragraph 4(k).

97. The House of Bishops in their reply summarised this position :

*7. With regard to the central issue, this shows that while there is a distinction between the Christian Faith (professed by the Church Catholic) and the doctrine of the Anglican Church of Australia (which is particular to our Church), assent to both are required of bishops and to be accepted by communicant members. The witness of the creeds as an essential part of the Christian Faith is supported by their placement in section 1 of the Constitution, with its allusion to Article VIII. Likewise, the ACA “receives all the canonical scriptures of the Old and New Testaments as being the ultimate rule and standard of faith” in section 2, with its allusion to Article VI. Clearly, the Apostles’ and Nicene Creeds do not exhaust the content of the faith of the Anglican Church of Australia. Other aspects of its faith are found in the canonical scriptures, the Thirty-nine Articles, and form part of the liturgical practice of our Church in the Ordinal and the BCP, and reflected in as well as other authorised liturgies or practices. Nonetheless, it should be noted that “the faith of this Church” (to use the language of section 26) includes the principles of doctrine and worship laid down in the “Book of Common Prayer, together with the Thirty-nine Articles, be regarded as the authorised standard of worship and in this Church”. Hence “no alteration in or permitted variations from the services or Articles therein contained shall contravene any principle of doctrine or worship laid down in such standard” (section 4).<sup>47</sup>*

98. The Constitution binds the church to both an Anglican understanding of the Apostolic faith and the guiding or ruling principles which direct the Anglican expression of that Apostolic faith.

***The Ruling Principles as the Interpretative Tradition of the Anglican Church of Australia***

99. The Anglican Church of Australia professes itself to be ‘a part of the one Holy Catholic and Apostolic Church of Christ’ and to hold ‘the Christian Faith as professed by the Church of Christ from primitive times’ particularly, but not exclusively, in the Creeds. I say not exclusively because it is clear from sections 2 and 3 that there are elements of the Faith not contained in the Creeds.

100. Accordingly, to assist us in understanding and applying Scripture, we can examine how Scripture has been understood from primitive times and set forth by the acknowledged Teachers, Liturgies, Legislation, Confessions and Councils of the Church. None of these is infallible; even venerable readings may be wrong. But nor can they be put aside lightly (cf Article XXXIV).

101. For the Church of England, and therefore for the Anglican Church of Australia, this means that special attention is to be paid to:

*‘the doctrine and principles of the Church of England embodied in the Book of Common Prayer together with the Form and Manner of Making Ordaining and Consecrating of Bishops, Priests and Deacons and in the Articles of Religion sometimes called the Thirty-nine Articles.’<sup>48</sup>*

<sup>47</sup> House of Bishops, Question 1, paragraph 7.

<sup>48</sup> Constitution, Section 4.



102. This is where the testimony of the tradition as understood by Anglicans is especially found. However, these documents are referred to in the Ruling Principles rather than the Fundamental Declarations precisely because, like all tradition, they are dependent for their veracity on the Scriptures.
103. Although, during the debates leading up to the adoption of the Constitution, there were those who wished to place them in the Fundamental Declarations, it was agreed that it was desirable that the way be open for change and that the autonomy of the Anglican Church of Australia be asserted. Hence the words, 'but has plenary authority at its own discretion to make statements as to the faith ritual ceremonial or discipline of this Church and to order its forms of worship and rules of discipline and to alter and revise such statements, forms and rules' is immediately subject to the proviso that any such changes must not 'contravene any principle of doctrine or worship laid down in such standard'.<sup>49</sup>
104. It may be worth noting that T C Hammond supported this Constitution precisely on the grounds that the 39 Articles which gave expression to what Archbishop Mowll called the Protestant and Reformed faith, were given an unchanging place of interpretative power. Here was the interpretative tradition of reading the scriptural text to which the Church of England and so the Anglican Church of Australia was committed. In this way, the Constitution allowed for 'deviations in form but not in substance' (13).<sup>50</sup>
105. Section 74(3) of the Constitution defines the phrase 'the doctrine and principles of the Church of England embodied in the Prayer Book and Articles' to mean 'the body of such doctrine and principles'. For T C Hammond this phrase:

*must be understood not merely the verbal expression at a certain point but the general contextual trend of the Church's formularies. A verbal change may not alter the body of a doctrine. For example, we could say "Precede us O Lord" instead of "prevent us O Lord" and retain the body of doctrine expressed in the Prayer Book. It would be very different if we substituted "May the Lord and His Blessed Mother precede or prevent us". He goes on, 'In order to determine points of this nature the ordinary principles of interpretation employed in courts of justice must be put into operation'.<sup>51</sup>*

106. The Ruling Principles set before us an interpretative tradition which the Constitution claims is faithful to the one Holy Catholic and Apostolic Church and which delivers a settled account of the Faith of the Church. To set it aside, is to disregard the very principles at work in the creation of the Constitution and the understanding of all the dynamics, negotiations, reasoning and ultimate agreement on the final form of the Constitution.

### ***The Ruling Principles on the Nature and Interpretation of Scripture***

107. The Prayer Book uses Scripture as the word of God written in all its services, giving it a pre-eminent place, in canticles, in the shaping of prayers, in the whole nature of the

49 T C Hammond, 'Arguments in favour of the Draft Constitution', ms. held in the Moore College Library (undated}.

50 Ibid, p.13

51 Refer above footnote 31, page 18.



approach to God. The original lectionary directed the use of almost all of the scriptures in daily reading, not suggesting that the Mosaic Law, for example, no longer needed to be read in Christian churches. There is no suggestion whatsoever that the Scriptures ‘contain’ the word of God in the sense that they contain other things as well.

108. Rather, the whole of Scripture ministers to the salvation of the readers:

*For the Scripture of God is the heavenly meat of our souls; the hearing and keeping of it maketh us blessed, sanctifieth us, and maketh us holy; it turneth our souls, it is a lantern to our feet; it is a sure, steadfast and everlasting instrument of salvation; ... the words of Holy Scripture be called the words of everlasting life: for they be ordained for that same purpose.*<sup>52</sup>

109. The use of the Scriptures in the BCP relies upon another principle, namely the clarity of Scripture. The Bible is read aloud to the people so that even the illiterate may benefit from its teachings. In most services no sermon is called for and there is no authoritative interpretation issued. But undergirding this is the key interpretative principle presented by the Articles and practised by the Prayer Book, namely the unity of Scripture, based on its inspiration by God. Thus Article VII, *Of the Old Testament*, affirms that the Bible is one, in that in both testaments ‘everlasting life is offered to Mankind by Christ’. And yet, at the same time, it is asserted that the Law of Moses is not binding on men or nations in its ceremonial and civil aspects, although, ‘no Christian man whatsoever is free from the obedience of the Commandments called Moral’.

110. The key to this judgment is found in Article XX:

*The Church hath power to decree Rites and Ceremonies, and authority in Controversies of Faith: and yet it is not lawful for the Church to ordain any thing which is contrary to God’s word written neither may it so expound one place of Scripture that it be repugnant to another. Wherefore, although the Church be a witness and a keeper of holy Writ, yet, as it ought not to decree anything against the same, so besides the same ought it not enforce any thing to be believed for necessity of salvation.*

111. That is, the common inspiration of Scripture by God himself means that Scripture must interpret Scripture, and the judgement that the civil and ceremonial laws are no longer to be exercised (though they are to be read for profit in that they point to Christ) is the application of the revelation contained in the New Testament to the details of the Old. The old sacrificial and food laws, for example, find their place as a testimony to the gospel, rather than a prescription for behaviour. But the moral law still stands.
112. The law of love is central to the biblical revelation of the will of God. It must give the moral law its heart. But it does not repeal the moral law. It helps us to see how it is to be administered and what it is aiming at. Thus the law against adultery is not softened or repealed by the law of love. Rather, it teaches us that adhering to the law against adultery for the right reasons is the law of love, it is the best way in which love is expressed. Similarly, the biblical injunctions against lying or greed are for our good. Thus when

52 Book of Homilies, see above footnote 39.

Jesus said to the woman caught in adultery, 'Neither do I condemn you,' he added, 'go, and from now on sin no more' (John 9:11).

113. The mere fact that there is contemporary difference of opinion about the meaning of the Bible does not relieve us of the responsibility as a Tribunal to examine the Scriptures, using the presuppositions and interpretative principles of the BCP and 39 Articles, to see what they are saying about the subject under discussion. In order to assist this work, the Tribunal is bound to listen carefully to the whole tradition of the Church from Primitive times and especially the statement of that tradition in the Reformation documents which our Constitution sees as being foundational. In this, the Tribunal has been assisted by the House of Bishops and the Board of Assessors, whose views on the these issues have been unanimous.

*Application of the Ruling Principles by the Appellate Tribunal*

114. The Tribunal has previously considered the meaning and application of the Ruling Principles, principally in its 1985<sup>53</sup> and 1987 Reports<sup>54</sup> in relation to the ordination of women to the office of deacon. In those reports, the Tribunal wrestled with the meaning of 'faith', 'doctrine', and 'principle of doctrine' as used in the Constitution.
115. Section 74(1) of the Constitution provides the following definitions which are to apply "unless the context or subject matter otherwise indicates":

*"Doctrine" means the teaching of this church on any question of faith. "Faith" includes the obligation to hold the faith.*

116. Section 74(3) provides that:

*In this Constitution "the doctrine and principles of the Church of England embodied in the Book of Common Prayer" and the "Articles of Religion" sometimes called the "Thirty-Nine Articles" means the body of such doctrine and principles.*

117. Section 74(4) provides that:

*In this Constitution, unless the context or subject matter otherwise indicates, any reference to faith shall extend to doctrine.*

118. In my view, the best analysis by the Tribunal on the meaning the terms "doctrine" and "principle of doctrine" in Section 4 of the Constitution is the opinion of Justice Young in the 1987 Report:

*Before tackling this question, it is necessary to digress and consider the definition of "doctrine" in s.74(1) of the Constitution. The word is defined as meaning "The teaching of this Church on any question of faith". "Faith" is then defined as including "the obligation to hold the faith". The word is used in contradistinction to the word "discipline" which is said to include "the rules of this Church and the rules of good conduct". The definitions are not completely in point because "This Church" means*

53 1985 Report, see above footnote 17.

54 1987 Report, see above footnote 18.

*“The autocephalous Anglican Church of Australia” whereas in s.4, the doctrine of the Church is the doctrine of the Church of England in England as at 1955. Nonetheless, s.74 seems to me to make a very definite division between the rules of order and conduct on the one hand, and the teaching of the Church on matters of faith on the other.*

*Reverting to the question of “principle of doctrine or principle of worship”, I adhere to what the majority said about the meaning of the word “principle” in 1985, viz that it connotes “A fundamental truth or proposition on which many others depend” (see the Oxford English Dictionary), and whilst there may be little doubt that the compilers of the Prayer Book assumed that only men would be ordained, and this assumption is reflected in the use of the masculine pronoun, this does not represent a considered and definitive judgment of principle.<sup>55</sup>*

119. Justice Tadgell in the 1987 Report followed the majority opinion (of which he formed part) in the 1985 Report as follows:

*The “doctrine... of the Church of England embodied...” referred to in the second and third lines of section 4 cannot in my opinion be the doctrine as defined in section 74(1) – viz. “the teaching of this Church on any question of faith” – or at least cannot be confined to it. The definition must yield (as the opening words of section 74(1) contemplate it may) to the inconsistent context of section 4, which indicates that the “doctrine” there referred to is that embodied in the specified formularies, described together as “the authorised standard of worship and doctrine in this Church”. That such doctrine is taken to consist of or include some “principles” is apparent from the expression “any principle of doctrine” contained in the concluding phrase of the first paragraph of section 4. “Principles” where first occurring in the section presumably does not include principles of doctrine (although it is difficult to be sure) and is no doubt calculated to include principles of worship, but I should doubt that it is necessarily confined to them. For the purpose of giving its opinion in 1985 it was essential for the Tribunal to fix upon a meaning of “principles” where first occurring in section 4, and opinion was divided. I have been unpersuaded by argument on the present reference that the majority view taken in 1985 (to which I was a party) was wrong but in any event I believe it is unnecessary here to pursue the matter.<sup>56</sup>*

120. The majority in the 1985 Report, comprising Rayner, Holland, Young and Tadgell, stated that:

*For this reason we take as our standard the primary definition of “principle” in the Oxford English Dictionary, namely “a fundamental truth or proposition on which many others depend”<sup>57</sup>*

121. Bishop Holland’s approach in the 1987 Report is that Section 4 of the Constitution should be given its ordinary and natural meaning:

55 1987 Report, see above footnote 18, page 108.

56 1987 Report, *ibid*, pages 84-85.

57 1985 Report, see above footnote 17, page 4.

*14. Section 4 of the Constitution is not only difficult of interpretation for laymen but appears to baffle and bewilder the lawyers too. This is not intended in totally uncomplimentary terms, but to pick up some words from the Sydney signatories, “unless terms, i.e. words, are terms of art with legal connotations or have been given judicial consideration then they should be given their ordinary and natural meaning. This, we submit, should determine the meaning of bishop, priest, deacon and principles”.*

*I have dealt already with bishop, priest, and deacon, and I am unwilling to depart from the definition of principle outlined in the 1985 Tribunal majority decision.<sup>58</sup>*

122. This view may be contrasted with the opinion of Archbishop Rayner set out as follows:

*In 1980 and 1985 the Tribunal expressed the opinion that the question of the ordination of women did not involve any doctrine embodied in the Prayer Book, Ordinal and Articles nor any principle of doctrine laid down in these formularies. That opinion may need explanation, particularly as in common usage the word doctrine may simply mean “that which is taught on any subject” (Shorter Oxford Dictionary). On such a general definition matters of doctrine might be held to be involved. Doctrine is however defined for the purposes of the Constitution in s.74 as “the teaching of this Church on any question of faith”. “Faith” is not defined in s.74 except by the statement (which is not helpful for our purpose) that it “includes the obligation to hold the faith”. The meaning of faith must therefore be taken from s.1 of the Fundamental Declarations as being “the Christian Faith as professed by the Church of Christ from primitive times and in particular as set forth in the creeds known as the Nicene Creed and the Apostles’ Creed”.*

*With this must be taken the s.2 description of the canonical scriptures as “the ultimate rule and standard of faith”. Account must also be taken of the statement of Article 6 of the Thirty-nine Articles that “Holy Scripture containeth all things necessary to salvation: so that whatsoever is not read therein, nor may be proved thereby, is not to be required of any man, that it should be believed as an article of the Faith, or be thought requisite or necessary to salvation”.*

*“Doctrine” must therefore be understood in the Constitution as the Church’s teaching on the faith which is necessary to salvation.<sup>59</sup>*

123. At issue is whether the phrase ‘which is necessary to salvation’ qualifies the word ‘teaching’ or the word ‘faith’. In my view, it must be the latter as Rayner immediately goes on to state:

*That faith is grounded in scripture and set out in the creeds; and the Church’s doctrine or teaching on that faith may be explicated and developed, provided it is always subject to the test of scripture. For reasons already advanced, I do not see the limitation of ordination to males as required by scripture, nor is it referred to in the creeds. (*emphasis added*)<sup>60</sup>*

58 1987 Report, see above footnote 18, page 76.

59 1987 Report, *ibid* pages 48-49.

60 1987 Report, *ibid* page 49.

124. I refer to my discussion above in paragraphs 28 – 37 and reiterate that in my view for Archbishop Rayner, doctrine is that which is taught by the Church about the faith which is not inconsistent with Scripture or the creeds; within that, some doctrine may be further explicated or developed provided that it is not inconsistent with Scripture. That it is possible for doctrine – in Rayner’s view – to develop does not mean it is not ‘doctrine’ within the meaning of the Constitution.
125. In summary, in my view Archbishop Rayner is distinguishing between doctrine which is an expression of Scripture and the creeds (and hence eternal) and other doctrine which may develop in a manner not inconsistent with the Scripture.
126. Justice Handley in the 1987 Report stated that:

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

*Notwithstanding the importance of the issues before us, the strongly held views on all sides, and the fundamental nature of the theological and biblical arguments which have been raised, in my opinion the questions involved are not part of the Christian faith professed by the Church, they are not dealt with in the Creeds, and do not directly involve matters necessary for salvation. This question before us therefore does not involve any principle of “doctrine” as that expression is used in the Constitution.<sup>61</sup>*

127. For Handley, the critical issue is whether the relevant questions are part of the Christian faith professed by the Church and are dealt with in the Creeds or directly involve matters necessary for salvation. In the 1987 Report, his view was that the ordination of women to the office of deacon was not such an issue.
128. Justice Cox in the 1987 Report stated that he was:

*in general agreement with the additional reasons, with respect to Chapter I, that have been prepared by the Archbishop of Adelaide for the purpose of the present reference (emphasis added).<sup>62</sup>*

129. Chapter 1 contains the Fundamental Declarations; whereas the Ruling Principles are contained in Chapter II. Therefore Justice Cox’s comment quoted above cannot be used to support the claim that he agreed with Archbishop Rayner’s position on the Ruling Principles. Further analysis of his opinion demonstrates that he held a different view.
130. In this regard, it is important to remember that Justice Cox specifically dissented from the majority opinion in the 1985 Report on its application of Section 4 of Chapter II:

<sup>61</sup> 1987 Report, *ibid* pages 115-116.

<sup>62</sup> 1987 Report, *ibid* page 14.



*We agree with the majority in holding that there is nothing in Sections 1, 2 and 3 of the Constitution of the Anglican Church of Australia – the Fundamental Declarations – that would prevent the ordination of a woman as a Deacon or Priest in the sacred ministry of the Church, or the consecration of a woman as a Bishop. Our difficulty is with Section 4. (emphasis added)*<sup>63</sup>

131. In the 1985 Report, Justice Cox issued a joint opinion with Justice Handley which stated as follows:

*The “principles” referred to in Section 4 must be principles of the Church, which relate to the Church, yet fall short of being matter of faith and doctrine. One of the many Oxford English Dictionary meanings for “principle” is*

- *5. fundamental truth or proposition, on which many other depend*

*This meaning would appear to be excluded in the context of Section 4 because the fundamental truths and laws of the Church of England are those referred to in Sections 1, 2 and 3 which comprise the Fundamental Declarations of Chapter 1.*

*That is the place for principles of the first rank, as it were – identifiable as such because they are, so far as the Constitution is concerned utterly unalterable. (See Section 66.) The principles of the Church of England referred to in Section 4, whether doctrinal or otherwise, are not unalterable – they may be changed by canon or, if need be, by amending Section 4 itself – and must therefore be taken to be principles of a different, lesser kind, not fundamental in the same sense as the principles contained in Chapter I. In our view the OED meaning of “principle” which is appropriate in the context of Section 4 is –*

- *A general law or rule adopted or professed as a guide to action; a settled ground or basis of conduct or practice; a fundamental... reason of action, esp. one consciously recognized and followed. (Often partly coinciding with sense 5)*<sup>64</sup>

132. The joint opinion applied this analysis and concluded that:

*In our opinion, therefore, the Ordinal does embody a principle of the Church of England within the meaning of Section 4 that men only are qualified for ordination.*

*Substantially the same reasoning applies, because of its language and provenance, and with the same conclusions, to the Ordinal that is contained in An Australian Prayer Book.*

*Our conclusion that the Ordinal goes further than Scripture in confining ordination to men is not inconsistent with the majority view of the Tribunal that the ordination of women is not contrary to Sections 1, 2 and 3 of our Constitution. As we have attempted to show, the questions under Section 4 are directed to a different issue and to the Ordinal rather than to the scriptures. This very distinction was recognized by this Tribunal in its 1980 decision when it decided that the ordination of women was not inconsistent with Sections 1, 2 and 3 but might be inconsistent with Section 4.*

63 1985 Report, see above footnote 17, page 6.

64 1985 Report, see above footnote 17, page 12.



*It is for these reasons that we dissented from the Tribunal's answers to Questions 1 and 6.*<sup>65</sup>

133. Whilst determining that a principle that ordination was restricted to men only was embodied in the Ordinal, Justices Cox and Handley held that this was a principle of discipline and not a principle of doctrine or worship:

*We concurred in the answer to Question 3, however, because the principle that we consider to be embodied in the Ordinal is not, in our opinion, a "principle of doctrine or worship" within the meaning of Section 4.*<sup>66</sup>

134. In the 1987 Report, Justice Cox re-affirmed his position set out in the 1985 Report:

*Mr. Handley Q.C. and I published joint reasons for our dissenting opinion. In summary, we held that the context indicates that the principles referred to in s.4 must be principles of the Church which fall short of being matters of faith and doctrine and which are principles of a different, lesser kind than the unalterable principles set forth in Chapter I as Fundamental Declarations; that the OED meaning of "principle" appropriate to s.4 is "A general law or rule adopted or professed as a guide to action; a settled ground or basis of conduct or practice; a fundamental reason of action, esp. one consciously recognized and followed. (Often partly coinciding with sense 5 – viz. Fundamental truth or proposition, on which many others depend ... )".... However, we also held that this principle was not a principle of doctrine or worship.*

*I see no reason to change the views expressed by Mr. Handley and me in 1985. In my opinion, the principle in question is a principle of discipline only.*<sup>67</sup>

135. He continued that a principle does not necessarily imply that the principle must be deliberately stated (in resolution of controversy); a principle might also be self-evident (so as to be beyond controversy):

*At any rate, the notion that the word "principle" necessarily implies a deal of deliberation, what the 1985 majority called "a considered and definitive judgement of principle", has its difficulties. If an important theological or ecclesiastical statement is made in one of the specified texts for the obvious purpose of declaring a doctrine or settling a controversy – as in the Catechism, for instance, and some of the BCP rubrics – it may not be difficult to identify the statement as a principle. It is paradoxical, however, and in my view wrong, to deny the same character to a statement of like importance simply because it was regarded by everyone at the time as so self-evident as to be beyond the reach of controversy, so that there was no controversy and therefore no occasion for expressing the statement in an elaborate or obviously deliberate manner, that is, what a critical reader 300 years later might think bears the hallmarks of a "considered and definitive judgement." A universally accepted rule may express a principle, in the s.4 sense, even though it does so by implication.*<sup>68</sup>

65 1985 Report, *ibid*, page 13.

66 1985 Report, *ibid*.

67 1987 Report, see above footnote 18, page 27.

68 1987 Report, *ibid*, page 30.

136. He continued:

*I am also of the opinion, for much the same reasons, that it is possible to read too much into the use of the word “embodied” in s.4. A doctrinal principle is embodied in the texts mentioned in s.4 if it finds its expression in those texts. I am uneasy about the notion of any great deliberation, even directness, being implied by the use of the “embodied”. However, if I am wrong about that it makes no difference for, in my view, the restriction of ordination to women was made in the Ordinal and in the Articles of Religion with all due deliberation.*

*Counsel for the Standing Committee submitted that the word “principle” in s.4 refers “not to the conduct or rule of conduct itself but its source, whether described as a fundamental truth or a general law or a rule on which the rule of conduct is based.” I agree with that proposition, in so far as it contrasts principle with conduct, but I am not so sure about the contrast with a rule of conduct. I think one may often correctly describe a rule of conduct as a principle. However, the conduct itself is rather in the area of practice, what one might think of as principles in action, and it may be that this is what the Bishops of Willochra and Armidale had in mind when in their written advice they contrasted the doctrine of the Church of England with the principles of the Church of England and described the principles as “those ways of doing things which were included in the Book of Common Prayer and the Thirty-Nine Articles but do not have the status of absolute doctrine. The principles reflect the way doctrine has been applied to the life of the Church.” Of course, the distinction between principle and practice will often not be of any moment, so far as s.4 is concerned, because the practice will be evidence of the principle that inspired it.<sup>69</sup>*

137. Justice Cox’s position allows for a wider understanding of the term ‘principle’ which includes a universally accepted rule which is evidenced by practice, regardless of whether the rule is stated in a deliberate manner (so as to end controversy) or treated as self-evident (beyond controversy).

138. In the 1991 Report, Justice Cox confirmed that he had not changed his mind on his position set out in the 1985 and 1987 Reports, although he considered himself bound by the majority views on the specific questions the subject of those Reports:

*I might add, to avoid any misunderstanding, that my taking this stand does not imply that I have changed my mind about the Ordinal and the Book of Common Prayer containing a principle of discipline opposed to the ordination of women. See my 1985 and 1987 reasons. The convenient legal principle of stare decisis, which I think we should now apply in this case, means that the majority view on that point in 1985 and 1987 should as a matter of policy be accepted by the Tribunal as a whole as correct, and thus the starting point for any further discussion, regardless of the contrary view hitherto taken by the minority of which I was one.<sup>70</sup>*

<sup>69</sup> 1987 Report, *ibid* pages 30-31.

<sup>70</sup> Appellate Tribunal 1991: Report and Opinion of the Tribunal on the eleven questions appertaining to the ordination of a woman to the order of priests or the consecration of a woman to the order of bishops, dated 1991, page 2.

139. Archbishop Robinson, no doubt mindful of the debates leading up to the adoption of the Constitution (which he personally witnessed and participated in), held a very high view of the importance of the doctrine and principles of BCP, from which he saw no power to depart. In the 1987 Report, he stated:

### 3. RULING PRINCIPLES

*The second question concerns the inconsistency of the canon with the Ruling Principles of the Constitution.*

*If, as already concluded, the canon is inconsistent with the Fundamental Declarations, it follows a fortiori that it is inconsistent with the Ruling Principles. The doctrine and principles of the Church of England embodied in the Book of Common Prayer and the 39 Articles – which this Church retains and approves under Section 4 – clearly embrace everything in the Fundamental Declarations, and further, no action taken under Section 4 is permitted to be inconsistent with the Fundamental Declarations.*

*The view has been advanced, however, that the admission of women to the diaconate is not inconsistent with the Fundamental Declarations, nor with the doctrine of the Church of England, but is inconsistent with a principle of the Church of England embodied in the Prayer Book and Articles; but that Section 4 itself gives power to the Church to depart from the principle involved, since it is not a principle of doctrine or worship laid down in the Prayer Book or Articles and therefore need not be retained.*

*In my judgement, such a view misunderstands both the purpose of Section 4 and the extent of the power conferred on the Church under it. The suggestion that Section 4 gives to the Church power to depart, even in a limited way, from the doctrine and principles of the Church of England retained and approved by this Church is, with due respect to those who have advanced it, preposterous, and I do not believe a single diocese would have voted to adopt the Constitution had it been thought at the time that Section 4 conveyed such a power. In fact all parties were united in desiring the retention and approval of the doctrine and principles of the Church of England, embodied in the Prayer Book and Articles, as a ruling principle of the Church under a new constitution.*

*The “but” in Section 4 was not a modification of that position. It was “but” in the sense of “however”. It merely indicated that the retention and approval of the doctrine and principles did not preclude the possibility of revising the Prayer Book or other statements of faith, or making rules of discipline. There was always a desire that this Church should “accept responsibility for the interpretation of the Faith and the conduct of our worship” (see Preface to the 1946 draft Constitution) and this was not thought incompatible with the declaration that “This Church doth retain and approve the doctrine and principles of the Church of England embodied in the Book of Common Prayer and the Articles of Religion” originally in Chapter 1 of the draft constitution without any qualification whatever. It does not now seem reasonable that a provision for ordering forms of worship, making statements or rules of discipline, should be used as a way of departing from a principle of the Church of*

*England embodied in the Prayer Book or Articles. How could the Church depart from a principle, under Section 4, which in that very section it not only retains but approves? Certainly, the retention and approval of the doctrine and principles of the Church of England could be affected by an amendment of Section 4 itself, by the duly provided method. But I reject the view that Section 4 itself should be invoked to provide a way of escape from a principle acknowledged to be embodied in the Prayer Book and Articles.*<sup>71</sup>

140. For Robinson, the critical question is whether the issues involved a departure “even in a limited way” from the doctrine and principles of the Church of England retained and approved by this Church, as embodied in the Prayer Book and Articles.

*What is the doctrine of the church regarding marriage?*

141. From the opening chapter of the Bible, marriage is viewed as between a man and a woman, and it is to be honoured and safeguarded (Heb 13:4). In the prototypical story of the joining of Adam and Eve, the Bible declares that they become one flesh, and then teaches that the sexual act unites us deeply with the other person, hence the importance of not engaging in prostitution (1 Cor 6:13-20), when we already belong to Christ. At the deepest level, therefore, is the teaching that the joining of Adam and Eve is intended to foreshadow the union of Christ and his people, his Bride (Ephesians 5:31-32).
142. The Scriptures, viewed as sufficient and inspired, have always been understood as clear: the word of God only endorses sexual relations between a man and a woman who are married to each other. Other relations, such as adultery, incest, bestiality, or homosexuality are condemned under the Moral Law of the Old Testament and the condemnation is reiterated in the New Testament. Jesus himself passes judgement on such behaviours, using the general term *porneia* (Mark 7:21-23) and so, too, do the Apostles, either generally or specifically (Acts 15:20, Rom 1:24-27, 1 Cor 6:9-20, 1 Tim 1:10). The emphasis has fallen on the practise of sex between people not married, although it was well understood in the days of Jesus that there were those who were naturally drawn to members of the same sex.

*Is this a principle of doctrine contained in the BCP or the 39 Articles?*

143. The submissions by Sydney contain a helpful summary:

*The doctrine that marriage is between a man and a woman is ‘a principle of doctrine’ that arises from the Form of Solemnisation of Marriage in the BCP, as determined by the Doctrine Commission in the letter quoted above.*<sup>72</sup>

144. The submission then explains the contents of the BCP teaching under six headings. Firstly, marriage is a union between a man and a woman:

*The BCP wedding service unites one man and one woman in marriage. The service ‘join[s] together this Man and this Woman in holy Matrimony’. The consents and*

<sup>71</sup> 1987 Report, see above footnote 18, *ibid* pages 63-64.

<sup>72</sup> Primary submissions of the Synod of the Diocese of Sydney, dated 16 December 2019, page 44.



*vows have a gendered reciprocity ('N wilt thou have this [woman/man] to thy wedded [wife/husband]'; 'I N. take thee N. to my [wedded wife/wedded husband]'). After the exchange of vows, the minister declares 'I pronounce that they be Man and Wife together', and later prays 'Send thy blessing upon these thy servants, this man and this woman'.*

*The man/woman principle is scripturally and theologically grounded in the liturgy. The BCP wedding service interprets Genesis 1-2 as making the relationship between Adam and Eve normative for the institution of marriage:*

- a) The priest declares that marriage 'joins together this Man and this Woman in holy Matrimony; which is an honourable estate, instituted of God in the time of man's innocency'. The reference to 'innocency' is a reference to Adam and Eve's pre-fall condition.*
- b) The priest declares that God 'at the beginning did create our first parents, Adam and Eve, and did sanctify and join them together in marriage', and prays that God would similarly bless the couple being joined in marriage.*
- c) The prayer for God's 'blessing [on] these two persons, that they may both be fruitful in procreation of children' echoes Gen 1:28 ('And God blessed them, and God said unto them, be fruitful, and multiply').*

*Furthermore, the BCP wedding service also applies Genesis 1-2 in light of Jesus' words in Matthew 19, seen in the priest's declaration that God 'didst appoint, that out of man (created after thine own image and similitude) woman should take her beginning; and, knitting them together, didst teach that it should never be lawful to put asunder those whom thou by Matrimony hadst made one.' This statement reflects Jesus' interpretation of Genesis 1-2 as recorded in Matt 19:4-6.*

*Because BCP grounds the man/woman nature of marriage in theology and scripture, this is a principle – and not merely a practice – of The Form of Solemnization of Matrimony. All jurisdictions which have changed their doctrine of marriage to allow same-sex partners have had to pass a Canon to do so, recognising that this was a departure from the man/woman principle embedded in the BCP wedding service.<sup>73</sup>*

145. Secondly, the purpose of marriage expressly contemplates the possibility of procreation:

*BCP identifies a threefold purpose for marriage— 'for the procreation of children', 'as a remedy against sin and to avoid fornication' and for 'mutual society, help, and comfort'.*

*This is further explained in Homily 18, 'Of the State of Matrimony', which states that '[Marriage] is instituted of God, to the intent that man and woman should live lawfully in a perpetual friendly fellowship, to bring forth fruit, and to avoid fornication.'*

*This threefold purpose of marriage is also scripturally and theologically grounded*

73 Synod of the Diocese of Sydney, *ibid* pages 45-46.

- a) *Marriage for the purpose of procreation derives, as already noted, from Gen 1:28 ('And God blessed them, and God said unto them, be fruitful, and multiply').*
- b) *Marriage for the purpose of 'a remedy against sin, and to avoid fornication; that such persons as have not the gift of continency might marry, and keep themselves undefiled members of Christ's body' derives from 1 Cor 7, especially 7:2 ('to avoid fornication'), 7:5-7 ('the gift of continency') and – implicitly – 7:9 ('keep themselves undefiled').*
- c) *Marriage for the purpose of 'mutual society, help, and comfort' derives from Gen 2:18 ('It is not good that the man should be alone; I will make him an help meet for him [KJV].')*

*The procreative purpose of marriage does not mean that a marriage is only valid if it is procreative. Rather, according to the BCP wedding service, the only valid context for the procreation of children is the context of a marriage between a man and woman. There are many examples in the Scriptures of couples unable to produce offspring, and there is no suggestion that their marriages were not valid. Nonetheless, the various annulling impediments related to impotence and non-consummation necessarily imply that marriage requires one man and one woman. To posit that the principles of the BCP permit same-sex matrimony makes an absurdity of the rubric which states: "... if any man do allege and declare any impediment, why they may not be coupled together in Matrimony, by God's law, or the laws of this Realm ... then the solemnization must be deferred, until such time as the truth be tried." Marriage is the God-instituted form of relationship which is directed towards the threefold purpose of marriage, even if all three aspects are not able to be manifest in every marriage.<sup>74</sup>*

146. Thirdly, the marriage covenant is described as a voluntary, lifelong and exclusive union:

*The BCP wedding service describes marriage as a 'vow and covenant betwixt them made'. In this covenant, husband and wife each commit to love each other in a lifelong and exclusive union— 'forsaking all other, keep thee only unto [her/him], so long as ye both shall live'. The lifelong nature of this promise is also highlighted in the vows, which are 'until death do us part'. The voluntary nature of these consents and vows is underscored in the marriage declaration— 'Forasmuch as N. and N. have consented together in holy wedlock...'*

*The exclusive monogamous nature of the marriage union reflects Jesus' teaching about adultery in Matthew 19. The lifelong nature of marriage reflects Paul's teaching in 1 Cor 7:39. Therefore, mutual promises of lifelong faithfulness are a principle of BCP with respect to marriage.<sup>75</sup>*

147. Fourthly, marriage is theologically grounded in Creation, and a sign of the union between Christ and the Church:

<sup>74</sup> Synod of the Diocese of Sydney, *ibid* pages 46-47.

<sup>75</sup> Synod of the Diocese of Sydney, *ibid* pages 47-48.



*As noted above, the BCP service describes 'holy Matrimony' as being 'instituted of God' between Adam and Eve in the Garden of Eden. That is, the BCP wedding service understands marriage to be not merely a human or social institution, but a pattern of human relationships that was and is 'God's ordinance'. Moreover, the fact that marriage is said to be 'from the beginning', rather than commencing with the Mosaic Law, signals that marriage is God's pattern for all humanity and not merely for his covenant people.*

*Human marriage is also symbolic of the relationship between Christ and the Church.*

*holy Matrimony ... is an honourable estate, instituted of God in the time of man's innocency, signifying unto us the mystical union that is betwixt Christ and his Church.<sup>76</sup>*

148. Fifthly, in the BCP marriage is the only relationship in which couples are 'joined together by God':

*The BCP marriage service explicitly rejects the validity of other forms of 'coupling':*

*so many as are coupled together otherwise than God's Word doth allow are not joined together by God; neither is their Matrimony lawful*

*It is important to note that BCP rejects the validity of those 'coupled together' contrary to God's word not contrary to Anglican forms. It is not making the claim that only Anglican marriages are valid. Any marriage which conforms to the principles outlined above – a voluntary, lifelong and exclusive union between a man and a woman reflecting God's purposes of marriage – is a marriage which is 'joined together by God'. This will include (for example) Jewish, Muslim and Buddhist weddings, and will also include civil marriages. This is the rationale for the liturgy for blessing a civil marriage, which has been released by the Liturgical Commission for trial use, as authorised locally by a Diocesan Bishop under s.4 of the Constitution.<sup>77</sup>*

149. Finally, in the BCP marriage, the particular role of the minister is to pronounce God's blessing:

*The particular role of the minister in a BCP marriage (beyond that of officiant and witness) is to pronounce and bless in God's name. After the exchange of vows, the minister declares:*

*I pronounce that they be man and wife together, in the Name of the Father, and of the Son, and of the Holy Ghost.*

*This is followed by the following prayer:*

*Send thy blessing upon these thy servants, this man and this woman, whom we bless in thy Name'*

<sup>76</sup> Synod of the Diocese of Sydney, *ibid* page 48.

<sup>77</sup> Synod of the Diocese of Sydney, *ibid* page 49.

*The pronouncement is a declaration that this couple has been validly joined together by God, and the blessing declares that this relationship is one which God blesses.*<sup>78</sup>

150. That marriage in the BCP is only between a man and a woman is applied in a multitude of ways, has been professed by the Church since primitive times, and has been clearly taught by Scripture. The Regulations are inconsistent with this.

152. It is a 'principle of doctrine' being:

- a. a fundamental truth or proposition on which many others depend (Young, Tadgell, Rayner and Holland, 1985 Report; Young, Tadgell, Holland, 1987 Report);<sup>79</sup>
- b. taught by the Church about the faith, which is not inconsistent with Scripture or the creeds (Rayner, 1987 Report);<sup>80</sup>
- c. part of the Christian faith professed by the Church (Handley, 1987 Report);<sup>81</sup>
- d. part of the doctrine and principles of the Church of England retained and approved by this Church, as embodied in the Prayer Book and Articles (Robinson, 1987 Report);<sup>82</sup> and
- e. a general law or rule adopted or professed as a guide to action; a settled ground or basis of conduct or practice; a fundamental reason of action, esp. one consciously recognized and followed (often partly coinciding with sense (a) – viz. fundamental truth or proposition, on which many others depend), whether stated in a deliberate manner (so as to end controversy) or treated as self-evident (Cox, 1985 and 1987 Reports).<sup>83</sup>

152. That the marriage service may have changed in parts, either before or after adoption of the Constitution in 1962, does not affect the conclusion that the Church's doctrine of marriage is a principle of doctrine contained in the BCP.

153. Put simply, the Anglican Church of Australia adopted the doctrine and principles of the Church of England which were in effect in 1962; any prior changes are caught up in this adoption. Any changes occurring after 1962 could only validly occur if such changes were not inconsistent with a principle of doctrine or worship contained in the BCP. In any case, the changes to allow the remarriage of divorced persons do not in any way contemplate the blessing of same sex civil unions. I conclude that the Regulations are inconsistent with a principle of doctrine contained in the BCP and are therefore invalid.

78 Synod of the Diocese of Sydney, *ibid* pages 49-50.

79 1985 Report, see above footnote 17, page 4; 1987 Report, see above footnote 18, pages 76 (Holland), 84-85 (Tadgell) and 108 (Young).

80 1987 Report, see above footnote 18, pages 48-49 (Rayner).

81 1987 Report, *ibid*, pages 115-116 (Handley).

82 1987 Report, *ibid*, pages 63-64 (Robinson).

83 1985 Report, see above footnote 17, page 12; 1987 Report, see above footnote 18, pages 30-31 (Cox).

*What is the doctrine of the church regarding persistence in sexual immorality?*

154. As stated by the House of Bishops:

*4. Accordingly, the Anglican Church teaches that persistent, unrepentant sin precludes a person from God's kingdom. This is reflected in Article XVI and expressed in the way that confession and the assurance of forgiveness is enacted in the authorised prayer books. In the opening sentences before the general confession in BCP include Psalm 143:2. "Enter not into judgment with thy servant, O Lord; for in thy sight no man living be justified." The reality of God's judgment upon the unrepentant is clearly manifest, as a reminder to the congregation of the need to confess their sins.<sup>84</sup>*

155. And as stated the Board of Assessors:

*a. The Apostle Paul asserts that persistence in sexual immorality precludes salvation in Christ: "Do you not know that the unrighteous will not inherit the Kingdom of God? Do not be deceived: neither the sexually immoral, nor idolaters, nor adulterers, nor men who practise homosexuality ... will inherit the kingdom of God. And such were some of you. But you were washed, you were sanctified, you were justified in the name of the Lord Jesus Christ and by the Spirit of our God" (1 Cor 6:9-11). In the very next paragraph, Paul goes on to state that sexual sin is of a different type from other sins: "The body is not meant for sexual immorality, but for the Lord, and the Lord for the body ... Flee from sexual immorality. Every other sin a person commits is outside the body, but the sexually immoral person sins against his own body ... So glorify God in your body" (1 Cor 6:13-19). This is consistent with the Old Testament law in which different types of transgression provoke different consequences and punishments. The teachings of the church, in many documents or formularies, explicitly follow Holy Scripture on this point.*

*b. In our services of public worship, we include times of confession and absolution not as something to be done in a perfunctory way (since "God pardons all who truly repent"), but rather in recognition that unless we continually turn to God and seek his forgiveness we may preclude ourselves from salvation in Christ. The absolution declares that God our Father "has no pleasure in the death of sinners but would rather they should turn from their wickedness and live." Assurance of forgiveness is offered to those who "truly repent and believe his holy Gospel." There is an implied recognition here that those who do not repent and believe but rather persist in sin are in danger of coming under God's judgement. As Anglicans, we acknowledge the concept *lex orandi, lex credendi* (the rule of prayer [is] the rule of faith), which means that our faith and our practice are bound together. We affirm in absolution, an act of repentance and assurance in authorised forms of worship, the teaching of the church concerning the link between sexual immorality and salvation....*

*q. In summary, the Anglican Church of Australia does teach (a) that persistence in sexual immorality precludes a person from salvation in Christ Jesus, (b) that such an ethical expectation is found in its prayer books, articles of religion, books of homilies,*

84 House of Bishops, Question 3, paragraph 4.

*and preeminently in Scripture, and (c) that while sexual immorality is listed alongside other sins yet by its public nature affords disgrace to the church in ways that other sins may not.*<sup>85</sup>

*Is this a principle of doctrine contained in the BCP or the 39 Articles?*

156. That persistence in sexual immorality endangers salvation has been applied in many ways, has been professed by the Church since primitive times, and has been clearly taught by Scripture.
157. Therefore, it is a ‘principle of doctrine’ being:
- a. a fundamental truth or proposition on which many others depend (Young, Tadgell, Rayner and Holland, 1985 Report; Young, Tadgell, Holland, 1987 Report);<sup>86</sup>
  - b. taught by the Church about the faith which is necessary for salvation (Rayner, 1987 Report);<sup>87</sup>
  - c. part of the Christian faith professed by the Church and directly involves matters necessary for salvation (Handley, 1987 Report);<sup>88</sup>
  - d. part of the doctrine and principles of the Church of England retained and approved by this Church, as embodied in the Prayer Book and Articles (Robinson, 1987 Report);<sup>89</sup> and
  - e. a general law or rule adopted or professed as a guide to action; a settled ground or basis of conduct or practice; a fundamental reason of action, esp. one consciously recognized and followed (often partly coinciding with sense (a) – viz. fundamental truth or proposition, on which many others depend), whether stated in a deliberate manner (so as to end controversy) or treated as self-evident (Cox, 1985 and 1987 Reports).<sup>90</sup>
158. The Church cannot bless behaviour which is sinful or sexually immoral; in particular, it cannot bless or encourage behaviour, which, if persisted with, endangers salvation.<sup>91</sup>
159. The Regulations seek to create a service of blessing for a same sex civil union which involves sexual practice outside of that which is taught or contemplated by Scripture and the doctrine of this church and which is intended for life:

*We have come together to ask God’s blessing on N and N as they continue their married life together....*

85 Board of Assessors, Question 3, paragraphs (a), (b) and (q).

86 1985 Report, see above footnote 17, page 4; 1987 Report, see above footnote 18, pages 76 (Holland), 84-85 (Tadgell) and 108 (Young).

87 1987 Report, see above footnote 18, pages 48-49 (Rayner).

88 1987 Report, *ibid*, pages 115-116 (Handley).

89 1987 Report, *ibid*, pages 63-64 (Robinson).

90 1985 Report, see above footnote 17, page 12; 1987 Report, see above footnote 18, pages 30-31 (Cox).

91 Board of Assessors, Question 4, paragraph 4(k).

### THE PROMISES

*As you have entered into a civil marriage and now seek God's blessing on your ongoing life together, I ask you: Will you be to each other a companion in joy and a comfort in times of trouble, and will you provide for each other the opportunity for love to deepen?*

*Couple: We will, with God's help.*

*(to each partner in turn): Will you, N, continue to give yourself to N, sharing your love and your life, your wholeness and your brokenness, your failure and your success?*

*Partner: I will. ....*

*Let us now pray that N and N may be sustained by God's love.*<sup>92</sup>

160. Accordingly, it must be found that the Regulations are inconsistent with a principle of doctrine contained in the BCP which would therefore make them invalid.

### *May the Church authorise anything contrary to Scripture?*

161. The answer to this question is “no” by virtue of the Fundamental Declarations. It is also contrary to the 39 Articles, namely:

#### *Article XX: Of the Authority of the Church*

*The Church hath power to decree Rites or Ceremonies, and authority in Controversies of Faith: And yet it is not lawful for the Church to ordain anything contrary to God's Word written, neither may it so expound one place of Scripture, that it be repugnant to another. Wherefore, although the Church be a witness and a keeper of holy Writ, yet, as it ought not to decree anything against the same, so besides the same ought it not to enforce any thing to be believed for necessity of Salvation. (*emphasis added*)*

162. The 39 Articles contains and principle of doctrine which the Regulations contravene.

### *To what extent is diversity of practice permitted?*

163. Whilst the Articles contemplate some diversity of practice, such variations must not be contrary to Scripture:

#### *Article XXXIV: Of the Traditions of the Church*

*It is not necessary that Traditions and Ceremonies be in all places one, and utterly like; for at all times they have been divers, and may be changed according to the diversities of countries, times, and men's manners, so that nothing be ordained against God's Word.*

164. Consistency and good order within the Church are a product of reliance upon Scripture which:

<sup>92</sup> Regulations, Appendix A.



*containeth all things necessary to salvation: so that whatsoever is not read therein, nor may be proved thereby, is not to be required of any man, that it should be believed as an article of the Faith, or be thought requisite or necessary to salvation. (Article VI: Of the Sufficiency of the holy Scriptures for salvation)*

165. However, Article 34 goes further and requires uniformity in “the traditions and ceremonies of the Church”, provided they are not inconsistent with Scripture, even in matters of conscience (‘private judgement’):

*Whosoever through his private judgement, willingly and purposely, doth openly break the traditions and ceremonies of the Church, which be not repugnant to the Word of God, and be ordained and approved by common authority, ought to be rebuked openly, (that others may fear to do the like,) as he that offendeth against the common order of the Church, and hurteth the authority of the Magistrate, and woundeth the consciences of the weak brethren.*

166. Likewise the purpose of BCP is to provide for consistency of Common Prayer, of Prayers in the Church, and of Administration of the Sacraments, throughout the Church:

*Now in regard that nothing conduceth more to the settling of the Peace of this Nation (which is desired of all good men) nor to the honour of our Religion and the propagation thereof then an universall agreement in the Publique Worshipp of Almighty God and to the intent that every person within this Realme may certainly knowe the rule to which he is to conforme in Publique Worship and Administration of Sacraments and other Rites and Ceremonies of the Church of England and the manner how and by whom Bishops Preists and Deacons are and ought to be made ordained and consecrated.<sup>93</sup>*

167. As Justice Tadgell stated in the 1997 Report, the question as to the ongoing application of the *Act of Uniformity 1662* is uncertain:

*The Tribunal was urged in the submission made on behalf of the Dioceses of Ballarat, Newcastle, Riverina, The Murray and Wangaratta to conclude that section 10 of the Act of Uniformity 1662 was in force in England when the Constitution took effect on 1st January 1962 and that, by virtue of section 71(2) of the Constitution, section 10 provides a ready answer to questions l(a) and l(b) that are now before us. The question whether section 10 of the 1662 Act was applicable to and in force in the several dioceses in this country in 1962 is moot.<sup>94</sup>*

168. However, as Justice Bleby stated in the 1997 Report, whilst the *Act of Uniformity 1662* is not part of the civil law, the principle of uniformity of worship is part of the consensual compact of the Australian Church:

*It appears reasonably clear that the Act of Uniformity was never part of the civil law applicable to the Australian colonies on their formation. One of the main purposes of*

<sup>93</sup> Act of Uniformity 1662 (14 Car 2 c 4), Recital.

<sup>94</sup> 1997 Report, see above footnote 33, page 7.



*the Act of Uniformity was to ensure uniformity of worship by requiring adherence to the BCP. That principle is reflected in s4 of our national Constitution. Section 10 of the Act of Uniformity had not been repealed by the British Parliament as at 1 January 1962. It appears that the principle of uniformity of worship which was enacted and the contents of s10 were undoubtedly part of the consensual compact of the dioceses of the Australian Church prior to 1962.*<sup>95</sup>

169. Citing the High Court case of *Wylde v Attorney-General* (the ‘Red Book case’), Justice Bleby continued:

*In Wylde v Attorney-General (NSW) (1948) 78 CLR 224 at 262 Latham CJ said:*

*“The Act of Uniformity is not in force as a statute in New South Wales, but it is a statute which prescribes both the doctrine and ritual of the Church of England in England, and therefore equally determines the doctrine and ritual of the Church of England as it exists in New South Wales.”*

*Rich J, at p276, also said that the Act of Uniformity did not apply in New South Wales, but he considered that the obligations under the Act in England were personal obligations on clergymen, and that those obligations could not be transmuted into obligations on the part of trustees of church trust property.*

*Dixon J said (at p296):*

*“[W]hile it is conceded that the Acts of Uniformity are not laws applicable to Australia so as to be in operation here in pursuance of 9 Geo. IV. c.83, yet an obligation of obedience to the actual provisions of the Act of 1662 is conceived as both an implied term of the consensual compact and as a necessary part of the full effectuation of the trusts.”*

*Williams J said (at p303):*

*“The Act of Uniformity of 1662 is not in force in New South Wales but this is, I think, immaterial for I agree with [Roper CJ in Eq.] that the liturgy prescribed by the Act is made by the Act a fundamental law of the Church of England and that it follows necessarily that this liturgy is a fundamental rule of the voluntary association in New South Wales. Otherwise I fail to see how the Church of England in New South Wales can be an integral part of the Church of England.”*

*There is no reason to believe that the position was any different in any of the other States. Section 10 was thus a law of the Church of England relating to faith ritual ceremonial or discipline, and was applicable to and in force in the several dioceses of the Australian Church as at 1 January 1962. It remains in force by virtue of s71(2) of the Constitution unless and until it is varied or dealt with in accordance with the Constitution. No such alteration has been made.*<sup>96</sup>

95 1997 Report, *ibid* pages 38.

96 1997 Report, *ibid* pages 38-39.

170. It follows that consistency of practice and worship, in furtherance of the good order of the Church, is a principle of doctrine and worship contained in the 39 Articles and the BCP; indeed, I consider that it is the very purpose of the BCP. Consistency does not require rote conformity; but it does require a sufficient level of coherence that our practice and worship can function as part of a single unified whole. As stated above in paragraph 53 above, a proper construction of the Constitution does not support a “two churches within the Church” view, any more than St Paul would have countenanced the concept of two separate churches of Christ in Colossae.
171. By contrast, the Regulations expressly contemplate that a minister may refuse to use the service based upon conscientious objection.<sup>97</sup> The Regulations will allow one parish to conduct the service and another to refuse to do so, on the grounds of conscience. In one parish, a same sex civil union will be celebrated and ‘blessed’ and yet in another parish, such a service may be lawfully refused as contrary to the teaching of the Church and contrary to Scripture. The Regulations allow for this even within the Diocese of Wangaratta.
172. Viewed nationally, the inconsistencies in practice on a fundamental point of whether the Church may bless a same sex civil union are divisive. The Regulations do not further the good order, consistency of practice and worship within the Diocese or the National Church; rather, the Regulations endanger our unity as a Church.
173. Principle 1 of the “*The Principles of Canon Law common to the churches of the Anglican communion*”<sup>98</sup> provides that the purpose of Church law is “to assist a church in its mission and witness to Jesus Christ” and “to order, and so facilitate, its public life and to regulate its own affairs for the common good.” The Regulations contravene this Principle (and indeed, contravene Principles 2 and 3 as well).
174. Therefore the Regulations are inconsistent with a principle of doctrine and worship contained in the 39 Articles and the BCP.

*To what extent may the doctrine of the church regarding the blessing of same-sex civil unions be changed?*

175. The Ruling Principles of the Constitution allow variety of practice in a way that the Fundamental Declarations do not. But such variances must still derive from lawful authority and to be consistent with, and not contravene, the principles of doctrine and worship contained in the BCP and the 39 Articles.
176. For that reason, there have been multiple variations allowed in the use of the Prayer Book (including matters such as the banns of marriage, and the need for a priest to officiate), and even the introduction of whole new Prayer Books including new services. But in every case, the General Synod has been assured that the changes made have not contravened a principle of doctrine or worship. Thus, for example, although there would be those in the Church who pray for the dead and would wish to have such prayers in the Liturgy, no such prayers have been introduced. Likewise, although the

<sup>97</sup> Regulations, Sections 5 and 6.

<sup>98</sup> Principles, see above footnote 3, page 19.

reservation of the sacrament is practised by some, especially when it comes to caring for the sick, this has not become part of the Liturgy of the Church.

177. On this basis, the General Synod has itself been quite clear that same-sex civil unions, although legally permissible in Australia, cannot be endorsed by the Church. I am bound by that position in determining an answer to these referrals. It therefore follows that for the doctrine of the church to change on this matter there would need to be changes or amendments to the Constitution. I, however, must consider the answers based on the current form of the Constitution.

*Are the Regulations inconsistent with the Ruling Principles?*

178. The answer to this question is clearly ‘yes’, for the following reasons:

- a. The Regulations are contrary to the Fundamental Declarations and therefore also the Ruling Principles (Article XX);
- b. The Regulations seek to bless same-sex civil unions which would not qualify for Christian marriage, as such civil unions are contrary to the church’s teaching on marriage;
- c. The Regulations seek to bless sinful practice, contrary to the Church’s teaching that persistence in sexual immorality endangers salvation; and
- d. The Regulations contravene the principle that our practice and worship should be consistent and in furtherance of the good order of the Church.

## Part 4 – Canon Concerning Services 1992

179. The Wangaratta Regulations purport to be made pursuant to Sub-section 5(2) of the *Canon Concerning Services 1992*, which provides as follows:

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

180. I agree with the submission of the Diocese of Tasmania that

*The phrase “Subject to any regulation made from time to time by the Synod of a diocese” does not empower any diocese to pass regulations. Instead, the phrase is a restriction on the power granted to a minister of a diocese: that is, the minister may use a form of service except to the extent prevented from doing so by Diocesan regulation to the contrary.*

*The Canon does not elsewhere grant any diocese the power to enact regulations.*

*It follows necessarily that the Wangaratta Regulations are not validly made under any purported power to make regulations under the Canon. Hence, the Wangaratta Regulations are invalid.<sup>99</sup>*

<sup>99</sup> Primary submission of the Diocesan Council of the Diocese of Tasmania, dated 13 December 2019, paragraphs 30-32.

181. Sub-sections 5(3) and 5(4) of the *Canon Concerning Services 1992* provide as follows:

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

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

182. The word ‘doctrine’ in sub-section 5(3) has the same meaning as in the Constitution. Accordingly, as I have already determined that the regulations contravene the Fundamental Declarations and the Ruling Principles, it follows that the ‘Service of Blessing’ does not comply with this subsection.

183. Finally, I am of the view that sub-section 5(4) does not grant a diocesan bishop exclusive power to determine a question concerning the observance of the provisions of Sub-section 5(3) as the *Canon Concerning Services 1992* must be construed in a manner consistent with the Fundamental Declarations and the Ruling Principles.

## Part 5 – Regulations are invalid

184. For the reasons outlined above in Parts 2, 3 and 4, my view is that a service of blessing for a same-sex civil union is contrary to our Constitution.

### *Acts Interpretation Act 1901-1948 (Cth)*

185. This raises the question as to whether the Regulations may be read down in such a way as to exclude the possibility of the use of the ‘Service of Blessing’ with respect to a same-sex civil union. In this way, the Regulations would be valid, but only to the extent that they were only used with respect to a heterosexual civil union.

186. There is some legislative support for this approach, namely Section 46 of the 1948 Act, which provides that:

*46. Where an Act confers upon any authority power to make, grant or issue any instrument (including rules, regulations or by-laws), then— ...*

*b) any instrument so made, granted or issued shall be read and construed subject to the Act under which it was made, and so as not to exceed the power of that authority, to the intent that where any such instrument would, but for this section, have been construed as being in excess of the power conferred upon that authority, it shall nevertheless be a valid instrument to the extent to which it is not in excess of that power.*

187. However, reading the Regulations down in this manner would be at odds with the express intent of the Synod of Wangaratta.

188. For these reasons, I cannot construe the Regulations in this manner to make them valid.

189. The 1948 Act does raise additional concerns regarding the method the Regulations have been created and whether they may be subsequently disallowed by General Synod.

190. Section 48 provides as follows:

*48.(1) Where an Act confers power to make regulations, then, unless the contrary intention appears, all regulations made accordingly—*

*a) shall be notified in the Gazette;*

*b) shall, subject to this section, take effect from the date of notification, or, where another date is specified in the regulations, from the date specified; and*

*c) shall be laid before each House of the Parliament within fifteen sitting days of that House after the making of the regulations.*

191. Where this process is not followed the regulations “shall be void and of no effect”.<sup>100</sup>

*Section 48 then provides for a process for Parliament to disallow the Regulations.*

192. As set out above in Part 4, the *Canon Concerning Services 1992* does not contain a regulating making power. Even if one was inferred, there is nothing in the *Canon Concerning Services 1992* evidencing any intention that regulations would not remain subject to scrutiny and disallowance by General Synod.

193. Given that the Regulations purport to be made under a Canon of General Synod, exercising General Synod’s legislative power, arguably General Synod may resolve to disallow the Regulations.

### ***Church of England Act 1854 (Vic)***

194. If the Regulations cannot be validly made under the *Canon Concerning Services 1992*, that raises the question as to whether the Synod of Wangaratta may enact them under its own legislative powers.

195. As the Diocese of Tasmania points out in its submission, the Diocese of Wangaratta is subject to the *Church of England Act 1854 (Vic)* (1854 Act).<sup>101</sup> That Act limits the powers of the Synod of Wangaratta (and all Victorian Synods) to ‘temporal matters’ only.

196. The Tribunal considered the application of the 1854 Act to the powers of Victorian Synods in its 1989 Report and confirmed that “the powers conferred are not plenary in the sense that they entitle synods to legislate with respect to all affairs of the Church”. It stated further that:

*The fact that the 1854 Act was facilitating and not mandatory as to the convening of synods is inconsistent with an intention or expectation that any exercise of the legislative powers which the Act conferred could produce any lack of uniformity with the wider Church upon essential matters of faith, doctrine and discipline....*

<sup>100</sup> 1948 Act, Section 48(3).

<sup>101</sup> Diocesan Council of the Diocese of Tasmania, see above footnote 99, pages 3 & 7.



*Secondly, the whole history of the 1850's shows that, both in Victoria and in England, there was a positive intention not to depart from the "firm and unalterable attachment to the Doctrine, discipline and government of the United Church of England and Ireland"; and an equal desire to see those characteristics "maintained in the colony in all their integrity": Report of the Conference held in Melbourne on 24th June 1852; Border, op cit., 201.<sup>102</sup>*

197. The Tribunal confirmed that the purpose of the 1854 Act was limited to temporal matters and did not extend to dealing with matters of faith or doctrine:

*There was a plainly expressed desire, as appears from contemporary evidence, to maintain both the stability of the Church within Victoria and its integrity and communion with the Church abroad, in England and elsewhere. Consistently with this approach the Bill for the 1854 Act was promoted by Sir William Stawell in his private capacity, not as Attorney-General, not as a "religious" one, but as "merely a Bill to enable the Church to regulate its temporal affairs". ....*

*It is sufficient to say that in our opinion the Act is not directed towards conferring powers to legislate upon spiritual matters. In particular, we do not consider that section V is concerned to authorise legislation dealing with faith and doctrine.<sup>103</sup>*

198. The references to 'faith' and 'doctrine' derive from the 1854 Act and are not constrained by the definitions in the Constitution. It follows that these terms should be given their ordinary meaning.
199. The Regulations provide for a spiritual blessing and, as such, extend to spiritual matters. The Synod of Wangaratta does not have power to legislate with respect to such matters.

## Part 6 – Other matters

### Section 58 process – when does it apply?

200. Section 58 of the Constitution provides as follows:

*"58. (1) Before determining any appeal or giving an opinion on any reference the Appellate Tribunal shall in any matter involving doctrine upon which the members are not unanimous upon the point of doctrine and may, if it thinks fit, in any other matter, obtain the opinion of the House of Bishops, and a board of assessors consisting of priests appointed by or under canon of General Synod."*

201. The historical background to this provision is illustrative of the framers' intent. As John Davis identifies in *Australian Anglicans and their Constitution*, the composition of the Appellate Tribunal was one of a number of sticking points preventing the

<sup>102</sup> 1989 Report, see above footnote 1, pages 11-12.

<sup>103</sup> 1989 Report, *ibid* pages 12-13.



adoption of a Constitution. Some interests wanted to restrict membership to bishops, others wanted the addition of lawyers.<sup>104</sup>

202. Eventually, the Constitution provided that where there was not unanimity on a point of doctrine, the counsel of the House of Bishops and a Board of Assessors be requested. In essence, this provision allows for the theological contribution of the bishop members of the tribunal to be augmented and fortified by considered reflections both from the diocesan bishops and the assessors. Once Section 58 come into play, the opinions of the House of Bishops and the Board of Assessors form part of the constitutional framework in the provision of an opinion answering questions posed in a reference.
203. Whilst the Tribunal is not bound to follow the opinions of the House of Bishops and a Board of Assessors, it would be a rare and unusual position to do so. As stated by Justice Bleby:

***Role and Function of the House of Bishops and Board of Assessors***

*Section 58(1) of the Constitution requires that before giving an opinion on any reference the Appellate Tribunal must, in any matter involving doctrine—' upon which the members are not unanimous, and may, if it thinks fit, in any other matter obtain the opinion of the House of Bishops and the Board of Assessors constituted under the Constitution. Section 58(2) provides: ....*

*Subject to the qualification referred to in s58(2), the House of Bishops comprises all the diocesan bishops of the Australian Church, and the Board of Assessors comprises seven priests elected by General Synod voting as a whole. It usually comprises theologians of undoubted standing in the Church.*

*Before expressing any views on the question, the Tribunal in this case sought and obtained the opinion of the House of Bishops and of the Board of Assessors. The Tribunal, in its advisory jurisdiction under s63 of the Constitution, is not obliged to call for submissions or to conduct a hearing. It may do so (s63(2)), and as a matter of practice in recent references has done so. However, the Constitution affords a special place and standing to the opinion of the House of Bishops and of the Board of Assessors which is not afforded to other representations. In effect those bodies have a constitutional standing as advisers to the Appellate Tribunal. This is not surprising, particularly in relation to matters of doctrine, where a majority of the Tribunal comprises legally qualified lay persons and therefore persons not necessarily qualified in such matters. It is also not surprising that the Constitution should ensure that substantial weight is given to the advice of diocesan bishops as the pre-eminent guardians of the doctrine of the Church.*

*There may even be an implication from s58(1) (although we have heard no argument on the matter) that any lack of unanimity in matters of doctrine among members of the Appellate Tribunal should be resolved by reference to the opinion of the House of Bishops and the Board of Assessors.*

104 John Davis, see above footnote 27, pages 67, 172-5, 184.

*It follows that in my opinion the Tribunal should be very slow to depart from the advice it receives from the House of Bishops and Board of Assessors, particularly when that advice is unanimous or substantially so. It should only depart from that advice if it is plainly wrong or contains an obviously flawed process of reasoning. Of course, if the House of Bishops and the Board of Assessors is more or less equally divided on the issue, then the Tribunal will have to form its own view on the matters.*<sup>105</sup>

204. Justice Young distinguished the opinions of the House of Bishops and a Board of Assessors where they strayed into providing opinions on legal questions:

*Again, the Tribunal usually has to deal with mixed questions of law and theology. When the bishops or the assessors include in their opinions, as they are entitled to do, their opinions on questions of law or statutory construction, the lawyer members of the Tribunal in particular, will usually not feel constrained to abide by the opinion.*<sup>106</sup>

205. In the present Referrals, both the House of Bishops and a Board of Assessors have provided unanimous opinions on doctrinal matters. Those opinions are thoughtful, well-reasoned and directly applicable to the matters in issue. The opinions reflect the views of many different Dioceses and strands of ‘churchmanship’, yet, through those differences both committees have provided the Tribunal with significant theological statements which are unanimous.

206. It is my opinion that the Tribunal is bound to follow, reflect and or adopt such opinions.

## **Are Appellate Tribunal opinions binding?**

207. There are many aspects to this question which each need to be addressed in turn.

208. Firstly, the Appellate Tribunal is not bound to follow its previous opinions:

*73. (1) In determining any question as to the faith ritual ceremonial or discipline of this Church any tribunal may take into consideration but shall not be bound to follow its previous decisions on any such questions or any decision of any judicial authority in England on any questions of the faith ritual ceremonial or discipline of the Church of England in England.*<sup>107</sup>

209. Justice Cox stated in the 1987 Report that:

*The Appellate Tribunal is at the head of the judicial structure created or recognized by Chapter IX of the Constitution and there is every good reason, quite apart from s.73, for the Tribunal not regarding itself as being bound by its previous decisions. That does not mean that it will ignore such decisions, or overturn them lightly, but it must retain the freedom in a proper case to re-examine a question and, if need be, to depart from a previous ruling. That was the stand that the Tribunal took in 1980*

105 1997 Report, see above footnote 33, pages 36-37.

106 1997 Report, *ibid* page 29.

107 Constitution, Section 73(1).

*with respect to the remarriage of a divorced person whose former spouse was still alive, and it is the stand which, in my opinion, the Tribunal should maintain.*<sup>108</sup>

210. President Mason stated in the 2007 Report:

*66. In this as in all matters the Tribunal should strive to maintain consistency. The Tribunal is not bound to follow its previous decisions (Constitution, s73(1)), but it should be slow to depart from them (see generally the Opinion of the President, Cox J in relation to the 1986 Reference in the matter of the Ordination of Women to the Office of Deacon Canon 1985).*<sup>109</sup>

211. Justice Young stated in the 8 September 2010 Report:

*15. The Tribunal is not bound to follow its previous decisions. However, it should only depart from them in clear cases and with great caution. Decisions will have been made and actions taken at many levels throughout the Church in reliance on the Tribunal's determinations. There are therefore good policy and practical reasons why its previous decisions should be followed. In this regard the Tribunal respectfully adopts the reasons of Cox J expressed in the Reference concerned in the Ordination of Women to the Office of Deacon Canon 1985 and of Mason P expressed in the Reference concerning Women Bishops.*<sup>110</sup>

212. Secondly, decisions of the Appellate Tribunal have limited legal effect. The decisions are not binding upon secular courts:

*Whilst the opinions published by the Anglican Appellate Tribunal are not binding upon this court, nonetheless the court should acknowledge in particular the undoubted eminence of the legally qualified members of the Tribunal, and the views of relevance expressed therein should not be disregarded. I would not hesitate to ignore such decisions if I thought they were wrong in law but that is not the case here. They are in my mind highly persuasive in a number of areas. Most importantly there appears to be a settled view about the basic legal character of the "federal scheme" embodied in the National Constitution, (see the 1989 Melbourne Opinion and the 1991 Women Priests Opinion).*<sup>111</sup>

213. The Appellate Tribunal, as a body formed and governed by the Constitution, is also similarly constrained. It follows that its decisions have limited ability to bind the Church – limited to purposes connected with or in any way relating to the property of the Church – as the majority in *Scandrett v Dowling* made clear:

*The first is that because the Constitution is a Schedule to an Act of the New South Wales Parliament, Act 16 of 1961, it had legally binding effect on all members of the Church in New South Wales not only in regard to Church property, but also in*

<sup>108</sup> 1987 Report, see above footnote 18, page 12.

<sup>109</sup> Appellate Tribunal Report to Primate: Reference on Women Bishops, 28 September 2007, page 22.

<sup>110</sup> Determination of the Appellate Tribunal, dated 8 September 2010, page 6; see also Justice Young's similar comments in the 8 March 2010 Report, paragraph 32.

<sup>111</sup> *Sturt and Anor v the Right Reverend Dr Brian Farran Bishop of Newcastle and Ors* [2012] NSWSC 400 (27 April 2012), paragraph 209.

*regard to the organization of the Church. Therefore the obligations and duties it creates are enforceable in the same way as those created by any statute.*

*I do not agree with this. Section 2 of Act 16 of 1961 in my opinion makes it as clear as words can make it that the binding legal effect of the Constitution is limited to purposes connected with or in any way relating to the property of the Church. Matters of faith and organization not connected or related to Church property are not made any more binding at law than they were before the Act was passed.*

*Secondly, it was said that all members of the Church in New South Wales were parties to a consensual compact embodied in the Constitution and that this compact had contractually binding effect on every member.*

*I do not agree with this either. In my opinion the parties to the consensual compact upon which the plaintiffs rely are bound to it by their shared faith, not the availability of the secular sanctions of the judgments, orders and decrees of State courts of law. The belief of Church members is that they are all one in Christ Jesus; an acceptable way of describing the Church, as I understand it, is that it is constituted by this unity.*

*The consensual compact is thus based on religious, spiritual and mystical ideas, not on common law contract. It has the same effect as a common law contract when matters of church property become involved with the other matters dealt with by the consensual compact.<sup>112</sup>*

214. Thirdly, ‘opinions’ issued under s63 of the Constitution cannot be final or authoritative, especially in matters of faith or doctrine; as stated by Justice Bleby such opinions are advisory only:

*In its answer to some questions referred to it in 1976 concerning the proposed canon for “An Australian Prayer Book” the Appellate Tribunal expressed the view that “the Act of Uniformity does not now apply to this Church”. That was in a somewhat different context, and it is not entirely clear whether the answer was directed to the Act as part of the civil law of the various States of Australia or in some other capacity, whether the Tribunal then had its attention directed to s71(2) of the Constitution or whether the observations in *Wylde v Attorney-General* (supra) were considered. The answer was given at a time when the Tribunal gave no reasons. In that rather unsatisfactory state of affairs, I do not consider that the Tribunal presently constituted is necessarily bound by that answer (see also s73(1) of the Constitution) and particularly as both then and now the Tribunal was and is exercising its advisory jurisdiction. (emphasis added)<sup>113</sup>*

<sup>112</sup> *Scandrett v Dowling* (1992) 27 NSWLR 483, paragraphs 512-513.

<sup>113</sup> 1997 Report, see above footnote 33, page 39.

## What is really at stake?

215. It would be remiss of me to ignore where the theological question raised by the current referrals sits in the wider context of the life of the Anglican Communion.
216. A central petition in the prayer recorded in John 17 is that the people committed by God into the hands of Jesus (John 17:6}: ‘may be one’ (John 17: 20}. The unity prayed for is of the highest order as our Lord compares it to the unity in the Godhead. A manifestation of that unity is when believers gather around the Lord’s Table. A more substantive and grounded example is unity in doctrine and practice within the Church.
217. I understand that the concept of ‘full communion’ means, at least, that a person ordained in diocese A, is recognised as properly ordained by the bishop of diocese B. The advent of women priests and bishops in some Australian dioceses has led to a situation of ‘impaired communion’. That is, there is no longer universal mutual recognition of orders. If approval is given to the blessing of same sex civil unions, the present state of impaired communion will be significantly exacerbated as may be shown by reference to recent history.
218. What has been labelled the issue of ‘human sexuality’ was the subject of the well referenced Resolution I.10 of the 1998 Lambeth Conference.<sup>114</sup> The core part of that resolution stated that 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.*<sup>115</sup>
219. Despite the vast majority of bishops supporting the resolution (562/70 with 45 abstentions), the Canadian diocese of New Westminster in 2002 countenanced the blessing of same sex unions. A year later the American diocese of New Hampshire elected as their bishop a ‘divorced man openly acknowledged to be living in a sexually active and committed same sex relationship’.<sup>116</sup> The Primates Meeting described the forthcoming consecration as one which might ‘tear the fabric of our Communion at its deepest level’.<sup>117</sup>
220. At the request of the Primates, the Archbishop of Canterbury commissioned the Windsor Report ‘on the legal and theological implications flowing from the decisions of the Episcopal Church (USA) to appoint a priest in a committed same sex relationship as one of its bishops, and of the Diocese of New Westminster to authorise services for use in connection with same sex unions, and specifically on the canonical understandings of communion, impaired and broken communion, and the way in which provinces of the Anglican Communion may relate to one another in situations where

<sup>114</sup> Lambeth Conference 1998: Resolution I.10 Human Sexuality, a copy of which is available in Appendix 3/6 of The Windsor Report (see below footnote 116).

<sup>115</sup> Lambeth Conference 1998: Resolution I.10, *ibid*.

<sup>116</sup> The Lambeth Commission on Communion: The Windsor Report 2004, Anglican Communion Office, London UK (2004), paragraph 27.

<sup>117</sup> Windsor Report, *ibid*.



the ecclesiastical authorities of one province feel unable to maintain the fullness of communion with another part of the Anglican Communion.’<sup>118</sup>

221. The Windsor Report records that the overwhelming response from other Christians both inside and outside the Anglican family has been to regard these developments as departures from genuine, apostolic Christian faith. ‘Condemnation has come from the Russian Orthodox and Oriental Orthodox churches, as well as a statement from the Roman Catholic church that such moves create “new and serious difficulties” to ecumenical relationships.’<sup>119</sup>
222. In the Anglican Communion, Windsor states that ‘some eighteen of the thirty-eight provinces of the Anglican Communion, or their primates on their behalf, have issued statements which indicate, in a variety of ways, their basic belief that the developments in North America are “contrary to biblical teaching” and as such unacceptable.’<sup>120</sup>
223. A further example of impaired communion was the absence of seven Primates from the Holy Communion service at the February 2007 Primates meeting. They issued a statement which said in part: We are unable to come to the Holy Table with the Presiding Bishop of The Episcopal Church because to do so would be a violation of Scriptural teaching and the traditional Anglican understanding:

*“Ye that do truly and earnestly repent you of your sins, and are in love and charity with your neighbours, and intend to lead a new life, following the commandments of God, and walking from henceforth in his holy ways; Draw near with faith”*<sup>121</sup>

## Part 7 – Answers to the Questions in the current Referrals

224. For the reasons outlined above, I answer the questions in the referral of 5 September 2019 as follows:

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

*ANSWER: No, the Regulations are not consistent with the Fundamental Declarations and Ruling Principles.*

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

*ANSWER: No, the Regulations are not validly made.*

118 Windsor Report, *ibid*, paragraph 13.

119 Windsor Report, *ibid*, paragraph 27.

120 Windsor Report, *ibid*, paragraph 28.

121 BCP, ‘Invitation to Confession’.



225. For the reasons outlined above, I answer the questions in the referral of 21 October 2019 as follows:

*Whether the use of the form of service at Appendix A to the Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019 made by the Synod of the Diocese of Wangaratta to bless a civil marriage which involved a union other than between one man and one woman, is consistent with the doctrine of this Church and consistent with the Fundamental Declarations and Ruling Principles in the Constitution of the Anglican Church of Australia.*

*ANSWER: No, the Regulations are not consistent with the Fundamental Declarations and Ruling Principles.*

*Whether the use of any other form of service, purportedly made in accordance with section 5 of the Canon Concerning Services 1992, to bless a civil marriage which involved a union other than between one man and one woman is consistent with the doctrine of this Church and consistent with the Fundamental*

*Declarations and Ruling Principles in the Constitution of the Anglican Church of Australia.*

*ANSWER: No, such a form of service would not be consistent with the Fundamental Declarations and Ruling Principles.*

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

*ANSWER: No, the Regulations are not validly made.*

## ii. Board of Assessors' report

### The Response of the Board of Assessors to Questions of the Appellate Tribunal concerning the Wangaratta Reference relating to the Validity of the Service of Blessing for Same-Sex Unions

The issues surrounding the topic of same-sex unions and their liturgical blessing have generated an enormous literature over the course of the last few decades. This response does not deal with each issue arising from this debate but is focussed on the four questions put by the Appellate Tribunal for clarification and advice.

1. *One of the many issues in the Reference is the meaning and scope of the words “the Christian Faith as professed by the Church of Christ from primitive times and in particular set forth in the creeds known as the Nicene Creed and the Apostles’ Creed”. Which of the Thirty-Nine Articles and which (if any) part of any other document (including Holy Scripture) contains statements relevant to the Wangaratta references about the **faith** of the Anglican Church of Australia and what are they?*
  - a. It is assumed in Fundamental Declaration #1 that the Christian faith existed before the Creeds were composed (“from primitive times”), and that the Creeds are a baptismal and eucharistic summary of our trinitarian profession.
  - b. In Fundamental Declaration #1, the word “Faith” is preceded by the definite article and is capitalised, suggesting a body of belief with recognisable shape before the composition of the Creeds, appealing to the Scriptures as the primary authority, with the commentary of the earliest Christian writers as later exposition.
  - c. We note that the language of “faith” can be used to mean “trust in a promise” (Rom 4:16), or “the content of what is believed” (Jude 3). These are broader categories than the distillation of our profession in the Creeds. The Fundamental Declaration #1 quoted here assumes that the Christian faith cannot be reduced to what the Nicene and Apostles’ Creeds contain.
  - d. The Scriptures can use the language of “faith” when referring to devotional dispositions or moral commitments. Noah “by faith” constructed an ark “in reverent fear” (Heb 11:7), and “by faith” Abraham “offered up Isaac” (Heb 11:17), even when these might have appeared foolish in the eyes of their generation. The New Testament speaks of “departing from the faith” when marriage is forbidden or abstinence from foods is enjoined (1 Tim 4:1-3), or being “disqualified regarding the faith” because certain leaders were corrupt in mind and opposed the truth (2 Tim 3:8), and still others were described as “faithless” for pursuing unrighteous acts (Rom 1:28-32). Behaviour has a necessary connection to the faith confessed (Js 2:14-26).

- e. The language of “Faith” in the Articles encompasses much more than profession of the Trinity. We note that in Article VI an “article of the Faith” is understood to mean not just belief in the Trinity but any teaching that can be read in the Scriptures or proved from the Scriptures and therefore required of believers, including matters of obedience.
- f. We note therefore that the Apostles’ and Nicene Creeds do not contain an entire summary of Christian belief in the early Church. They summarise orthodox doctrines mainly in response to crucial controversies, both theological and ethical. This was because the church was seen as “holy,” an epithet referring to the church’s union with Christ and therefore requiring the holiness of its members. In “An Explanation of the Creed,” Nicetas of Remesiana (c. 335–414) makes clear that, “These ‘churches’ ceased to be holy, because they were deceived by the doctrines of the Devil to believe and behave differently from what Christ commanded and from the tradition of the Apostles,” providing essential background to the statement in the Apostles’ Creed, “I believe in ... the holy [...] church” and in the Nicene Creed “We believe in one holy [...] church”. See *Niceta of Remesiana: Writings* (Washington: The Catholic University of America Press, 1949), 50.
- g. One such controversy regarding holiness concerned the committing of particularly serious sins (sometimes called “mortal sins” or “crimes”) after baptism. Three sins were universally deemed by the early church so grave that those who committed them were to be excommunicated from the church: idolatry, murder, and sexual immorality. In the early church the “crime” of sexual immorality encompassed any sexual act outside of biblically licit heterosexual marriage, which included homosexual activity. For example, Basil of Caesarea says, “He who commits shameful deeds with men will be allotted the time prescribed for him who transgresses by adultery.” See *Letters* 217.62 (Washington, DC: Catholic University of America Press, 1955), 110.
- h. There was debate over how a person could re-enter the church after committing such a sin but none over the seriousness of sexual immorality. It was universally agreed that a person would not receive forgiveness from a “crime” through re-baptism but through public repentance (because they had been publicly excommunicated). This teaching is summarised in the Nicene Creed by the affirmation of belief in: “one baptism for the forgiveness of sins,” which concerned church discipline not how one became a Christian. See David F. Wright, “The Meaning and Reference of ‘One Baptism for the Remission of Sins’ in the Niceno-Constantinopolitan Creed,” in *Infant Baptism in Historical Perspective: Collected Studies* (Milton Keynes: Paternoster, 2007), 55-60.
- i. The Thirty-nine Articles affirm the creedal teaching about “the holy church” and the “forgiveness of sins.” Article XVI (*Of Sin after Baptism*) teaches that some post-baptismal sins are so serious that a person may “depart from grace given.” The first and third Homilies, and Articles XVI and XXXIII, affirm that those who commit serious sins (including sexual sins) are to be excommunicated from the visible church until there is repentance. This reflects Augustine’s understanding of creedal statements concerning belief in the “holy [...] church” and “forgiveness of sin”:

- “However, in the Holy Church the remission of even crimes themselves, no matter how great they may be, by God’s mercy need not be despaired of by those who do penance according to the gravity of their sins. But when the crime committed is such that the sinner is also cut off from the body of Christ, we must consider in the act of repentance not so much the measure of time as the measure of sorrow; for, a contrite and humbled heart God will not despise.” See Augustine, *Faith, Hope, and Charity* (New York: Newman Press, 1978), 65-66.
- j. It has been argued in those submissions supporting the decision of the Wangaratta synod that Anglicans have freedom in matters of adiaphora outside of our commitment to the Apostles’ and Nicene Creeds, so that matters of sexual ethics are left to the individual’s conscience. However, we have argued that the creeds do address sexual ethics in the church, but also declare the authority of the Holy Trinity, Father, Son, and Spirit over our every part of lives, and our commitment to this. The creeds have a disciplinary not just a unifying function.
  - k. Article XXXV says the Homilies “contain godly and wholesome doctrine.” The Homily on Scripture (Homily #1) is directly about Article VI and widens the meaning of “all things necessary for salvation” in application of the Scriptures to include matters of behaviour and not merely belief. For example:
 

*For in Holy Scripture is fully contained what we ought to do and what to eschew, what to believe, what to love and what to look for at God’s hands at length ... there is nothing that more maintaineth godliness of the mind and expelleth/**driveth away** [1559]*

*ungodliness than doth the continual reading or hearing of God’s Word, if it be joined with a godly mind and a good affection to know and follow God’s will. For without a single eye, pure intent and good mind, nothing is allowed for good before God. And on the other side, nothing more obscureth/**darkeneth** [1559] Christ and the glory of God, nor induceth/**bringeth in** [1559] more blindness and all kinds of vices, than doth the ignorance of God’s Word. See Gerald Bray, *The Books of Homilies: A Critical Edition* (Cambridge: James Clarke & Co., 2015), 7, 9, 10.*
  - l. We note that in twentieth century ecumenism, the language of faith was used broadly in the “Faith and Order” movement, treating any concern that would create obstacles for church reunion, as distinct from the “Life and Work” movement which was concerned with society, economics and politics. The question before the Tribunal regarding the blessing of same-sex unions is a matter of faith and order, for it concerns our doctrine as well as behaviour governed by such doctrine. It is not a matter of “Life and Work” from ecumenical perspective.
  - m. In summary, when speaking of the Faith of the Anglican Church, we insist that this includes matters of obedience as well as doctrine. This has been demonstrated in writings of the patristic era, debates in the Reformation era expressed through the Articles, the Book of Common Prayer, and the Homilies, twentieth century usages, all of which build on the Scriptural texts cited above.

2. *Can you please refer the Tribunal to two or three respected, published, available works or articles discussing the history and scope of Article VI? In that Article, what is meant by the words “containeth all things necessary to salvation”?*
  - a. The purpose of Article VI is to affirm the sufficiency of Scripture in all things necessary to salvation, to insist on the authority of Scripture to judge the doctrine of the Church, and to affirm the books of the Old Testament listed as canonical writings, excluding the Old Testament Apocrypha. This Article affirms the New Testament canons received, without the New Testament apocrypha.
  - b. Further rejection of misleading teaching and late medieval accretions is found in Cranmer’s Homily #1 (written in 1540 before the Articles and providing inspiration for Article VI), which rejected the “stinking puddles of men’s traditions.”
  - c. The English Reformers were at one with the early church leader Athanasius in reinforcing the point that moral living is an entailment of salvation: “These [books of the canon] are fountains of salvation, that they who thirst may be satisfied with the living words they contain. In these alone is proclaimed the doctrine of godliness. Let no man add to these, neither let him take ought from these.” See Athanasius, “Festal Letter 39,” *NPNF2* 4:551-552.
  - d. We note that Article VII explicitly connects the nature of salvation or everlasting life through Christ which is taught in both Old and New Testaments, to “the obedience of the Commandments which are called Moral.” The scope of Article VI leads to the explanation of Article VII, which demonstrates the connection between faith, and order, and their moral implications.
  - e. This very connection between faith and obedience is made clear by Oliver O’Donovan in relation to Article VI: “They [the Reformers] were not in the business of defining a *minimum* content of Christian faith which, however deficient, would suffice to ensure the believer his place in the Kingdom of Heaven – and nor should any of us be in that doubtful business. ‘Necessary to salvation’ can mean only one thing: that it is pertinent to the Gospel of Jesus Christ, which demands of us, for the salvation of our souls, our total faith and obedience. Belief in Christ is indivisible.” See Oliver O’Donovan, *On the Thirty-nine Articles: A Conversation with Tudor Christianity* (Carlisle: Paternoster, 1993), 52.
  - f. For further respected, published works on this question, see: Gerald Bray, *The Faith We Confess: An Exposition of the 39 Articles*. (London: Latimer, 2009); J. A. Null, ‘Thomas Cranmer and the Anglican Way of Reading Scripture’, *Anglican and Episcopal History* 75/4 (2006): 488–526; M. Foord, ‘Article VI’, in L. Gatiss (ed.), *Foundations of Faith: Reflections on the 39 Articles* (London: Church Society, 2018), 50–54.
  - g. In summary, the phrase “containeth all things necessary to salvation” means that the Holy Scriptures have authority, convey power, and are sufficient to lead us to faith in Christ, they judge all teaching and behaviour which might endanger our obedience to Christ, and they provide assurance of the right path towards eternal life in Christ.



3. *Does the Anglican Church of Australia have a teaching on whether persistence in sexual immorality precludes a person from salvation in Christ Jesus? Where is this teaching set out? In this context, is sexual immorality different from other forms of sinfulness?*
  - a. The Apostle Paul asserts that persistence in sexual immorality precludes salvation in Christ: “Do you not know that the unrighteous will not inherit the Kingdom of God? Do not be deceived: neither the sexually immoral, nor idolaters, nor adulterers, nor men who practise homosexuality ... will inherit the kingdom of God. And such were some of you. But you were washed, you were sanctified, you were justified in the name of the Lord Jesus Christ and by the Spirit of our God” (1 Cor 6:9-11). In the very next paragraph, Paul goes on to state that sexual sin is of a different type from other sins: “The body is not meant for sexual immorality, but for the Lord, and the Lord for the body ... Flee from sexual immorality. Every other sin a person commits is outside the body, but the sexually immoral person sins against his own body ... So glorify God in your body” (1 Cor 6:13-19). This is consistent with the Old Testament law in which different types of transgression provoke different consequences and punishments. The teachings of the church, in many documents or formularies, explicitly follow Holy Scripture on this point.
  - b. In our services of public worship, we include times of confession and absolution not as something to be done in a perfunctory way (since “God pardons all who truly repent”), but rather in recognition that unless we continually turn to God and seek his forgiveness we may preclude ourselves from salvation in Christ. The absolution declares that God our Father “has no pleasure in the death of sinners but would rather they should turn from their wickedness and live.” Assurance of forgiveness is offered to those who “truly repent and believe his holy Gospel.” There is an implied recognition here that those who do not repent and believe but rather persist in sin are in danger of coming under God’s judgement. As Anglicans, we acknowledge the concept *lex orandi, lex credendi* (the rule of prayer [is] the rule of faith), which means that our faith and our practice are bound together. We affirm in absolution, an act of repentance and assurance in authorised forms of worship, the teaching of the church concerning the link between sexual immorality and salvation.
  - c. Article XXIX (*Of the Wicked which eat not the Body of Christ in the use of the Lord’s Supper*) affirms this in its recognition of the possibility of church members who are “void of a lively faith,” although they partake of the sacraments, are “in no wise ... partakers of Christ.” Instead through eating and drinking the sacrament, they are doing so “all to their condemnation.”
  - d. Such teaching is reflected in the words of the Exhortation in the BCP service of the Lord’s Supper. There the priest calls the congregation to “examine your lives and conversations by the rule of God’s commandments.” The congregation is warned that “if any of you be a blasphemer of God, an hinderer or slanderer of his word, an adulterer, or be in malice, or envy, or any other grievous crime,” if they deliberately continue in that state and then partake of the holy Communion they risk that “the devil enter into you, as he entered into Judas, and fill you full of iniquities and bring you to destruction both of body and soul.”



- e. The Prayer book therefore teaches that persistence in sin may preclude a person from salvation in Christ Jesus. Nevertheless, it repeatedly affirms that grace and mercy are extended towards those who repent and entrust themselves to the Saviour.
- f. The Prayer book does not normally make a distinction between general persistence in sin, and particular persistence in sexual immorality. It is worth noting however that within the catechism part of our duty towards our neighbour is the need to “keep my body pure” – a reference to the command not to commit adultery.
- g. This commandment is explored in depth in the Books of Homilies, referred to in Article XXXV as containing “godly and wholesome doctrine,” with particular exposition in Homily #9 in the First Book of Homilies.
- h. This homily describes sexual immorality (“whoredom and uncleanness”) as a sin “above other vices” which has “overflowed almost the whole world to the great dishonour of God.” The homily then describes the nature of sexual immorality and its impact on the church and the world. Particular focus is given to Christ’s teaching in the sermon on the Mount: “you have heard that it was said to them of old, thou shalt not commit adultery, but I say unto you, whosoever sees a woman, to have his lust of her, has committed adultery with her already in his heart.” The author of the homily notes other Scriptural texts which warn of the eternal consequences of sexual immorality, concluding with the admonition to all believers to avoid fornication (“let every man have his own wife, and every woman her own husband”), and for those who feel able through the work of God’s spirit to lead a celibate life, to praise him for his gift and to maintain their celibacy by the reading of the Scriptures, continual prayer, and other virtuous exercises.
- i. In the first Book of Homilies, the sermon called *Against Adultery*, written by Thomas Becon, quotes at length from Paul’s argument in 1 Corinthians 6: “For every sin that a man committeth is without his body; but whosoever committeth whoredom sinneth against his own body.”
- j. In the second Book of Homilies, the sermon called *An Homily on the State of Matrimony* quotes Paul from 1 Corinthians 6 again and makes plain the church’s understanding of the text: “Which sort of men that liveth so desperately and filthily, what damnation tarrieth for them ... This horrible judgment of God ye be escaped through his mercy, if so be that ye live inseparately according to God’s ordinance.”
- k. If practices of sexual intimacy within marriage can be morally neutral, but which are nonetheless sinful outside of marriage, how much more should we expect a practice that is nowhere in the Scriptures affirmed (like same-sex sexual intimacy) be singled out for condemnation.
- l. The BCP includes a warning against sexual immorality described with the synonym “fornication” in the epistle reading from Ephesians 5 on the Third Sunday in Lent, where the sinner risks forfeiting their inheritance in the Kingdom of God if there is no repentance. Using this language, the Great Litany prays for deliverance “from all fornication, and all other deadly sin, and from all the deceits of the world, the flesh and the devil.”

- m. In the BCP, sexual immorality lies under the most severe condemnation in the service of “A Communion, or Denouncing of God’s Anger and Judgements against Sinners,” where the priest pronounces this warning: “Cursed are the unmerciful, *fornicators*, and adulterers, covetous persons, idolaters, slanderers, drunkards, and extortioners. Amen” (italics added). And to those who are unrepentant of these sins: “Then shall appear the wrath of God in the day of vengeance, which obstinate sinners, through the stubbornness of their heart, have heaped unto themselves, which despised the goodness, patience, and long-sufferance of God, when he calleth them continually to repentance.” A curse assumes God’s settled opposition to certain practices, disallowing the possibility of salvation, unless there is hearty repentance and amendment of life.
  - n. Sexual immorality is without excuse in the lives of those ordained. It is assumed in the Ordinal of 1662, in “The Form and Manner of Making, Ordaining, and Consecrating of Bishops, Priests and Deacons” that those so called will be of “vertuous conversation.” We note that in this Ordinal, the bishop exhorts the one about to be priested with words that connect doctrine with moral behaviour: “... that ye may so endeavour your selves from time to time, to sanctifie the lives of you and yours, and to fashion them after the *rule and doctrine of Christ*, that ye may be *wholesome and godly examples* and patterns for the people to follow” (italics added). Doctrine implies moral duties and the clear requirement and demonstration of moral probity.
  - o. We note in Cranmer’s *Confutation of Unwritten Verities* – essentially a tract against the priority of tradition as a source of authority in the life of the church – these words which place moral teachings alongside doctrinal commitments: “For they be but things indifferent to be believed, or not believed, and are nothing like to scripture, to the Articles of the Faith, the Ten Commandments, ne [sic] to such other moral learnings, as are merely derived out of scripture: for they must of necessity be believed and obeyed of every Christian man” (516).
  - p. Such teachings on the gravity of unrepentant sexual sin assume Scriptural texts setting out the nature of marriage (Gen 2:18-25, Mt 19:3-12), the immorality of sexual intercourse outside of monogamous marriage between a man and a woman (Mk 7:21, Eph 5:3-7, Rev 22:15), and homosexual activity as contrary to God’s will (Rom 1:26-27, 1 Cor 6:8-10).
  - q. In summary, the Anglican Church of Australia does teach (a) that persistence in sexual immorality precludes a person from salvation in Christ Jesus, (b) that such an ethical expectation is found in its prayer books, articles of religion, books of homilies, and preeminently in Scripture, and (c) that while sexual immorality is listed alongside other sins yet by its public nature affords disgrace to the church in ways that other sins may not.
4. *Do you see any doctrinal impediment or difficulty with the baptism of a child of a same-sex married couple according to one of the Anglican Church of Australia’s authorised rites, including the use of the prayer for the child’s parents?*
- a. In treating pastoral encounters such as this, we begin by recognising that Scripture does not condemn homosexual temptation. Temptation is not a sin; Jesus himself

was tempted. So a particular person's experience of ongoing same-sex attraction and temptation is not the issue at hand. Rather, Scripture condemns homosexual activity and the belief that it is morally permissible for any Christian.

- b. In relation to baptism, it is the Book of Common Prayer of 1662 that is the formulary against which our doctrine of baptism must be measured. In this formulary, it is the godparents who make the declarations. Hence this authorised rite in the Anglican Church of Australia does not require the parents, whether a same-sex married couple or a heterosexual couple, to make such declarations for their children to be baptised. The dialogue between godparents and clergy in BCP is as follows: "Dost thou, in the name of this Child, renounce the devil and all his works, the vain pomp and glory of the world, with all covetous desires of the same, and the carnal desires of the flesh, so that thou wilt not follow, nor be led by them?" Answer. "I renounce them all." Nevertheless, since the question put to the Board of Assessors allows for other baptism services as well as the service in the BCP, the following answer will address the issue from such a vantage point.
- c. The baptism service in APBA speaks of baptism as "the gift of our Lord Jesus Christ." Yet as with all gifts, this gift needs to be received by faith – it is not automatically bestowed regardless of faith. In the case of children, this faith is that of the parents and godparents who before a congregation "must express their own trust and commitment to the promises of God, and their intention to bring up their children in the faith and practice of the Church."
- d. The sacrament of baptism has no efficacy unless received by faith, either of those making promises on behalf of another, or by the one being baptised in water.
- e. Our baptismal rites assume parents or sponsors who can make promises on behalf of the child to be baptised. Those promises contain explicitly Christian convictions, attitudes, and prayers.
- f. The Catechism assumes that those making promises on behalf of a child exercise repentance and faith, which the child then personally affirms at their confirmation (APBA, 818). Sherlock comments: "... An infant is not baptised because of who their parents may be (their bloodline), but because some Christians (their sponsors) trust that the child is called to grow up in Christ." See *Australian Anglicans Worship: Performing APBA* (Mulgrave: Broughton, 2020), 172.
- g. The baptism service invites "the sponsors of those unable to answer for themselves" (i.e. both godparents *and* parents– see note 11 on APBA, 71) to accept the responsibilities placed upon them in bringing their child for baptism, and publicly commit to encouraging the child, by their prayers and example, in the life and faith of the Christian community. The very act of baptism occurs on the basis that children will be brought up in the faith of the church, which as noted above, includes matters of Christian obedience, not only of belief or verbal profession.
- h. Since the Anglican Church of Australia does not affirm same-sex marriage within the life and faith of the church, it would be incongruous to invite a same-sex couple to make such a public statement. The Church's teaching is that marriage is only

- between a man and woman, and thus to invite a same-sex couple to raise their child in a way that their own lifestyle fails to exemplify, could lead to an accusation that the church encourages hypocrisy. By the very act of standing up in front of the church to make promises as a same-sex couple, the couple are publicly declaring themselves to be unrepentant.
- i. Where sponsors cannot make this declaration with honesty, baptism ought to be delayed until sponsors can make such promises with full integrity. By doing this the church is not refusing the baptism of a child but is rather giving an opportunity for couples to grow in their understanding of the teaching of the church so that they can raise their children within the bounds of the faith of the church.
  - j. Although pastorally this may seem difficult, the church is nevertheless called to be a steward of the sacraments entrusted to it by Christ and not to treat them carelessly nor lightly.
  - k. God pours out the rain on the just and the unjust, so any private prayer for same-sex married parents would focus on common grace gifts like peace, health, honesty, or generosity, but would not assume a blessing on their married state, for God cannot bless that which is named as sin.
  - l. The service of Baptism is situated in APBA in a sequence of services designed to focus on Christian identity and is not to be understood therefore as a rite of passage to be offered indiscriminately. See Charles Sherlock, *Australian Anglicans Worship: Performing APBA*, 163.
  - m. The Canon Concerning Baptism 1992 (p8) recognises that the sponsors (including parents) will both nurture and instruct this child in the Christian faith, and importantly will provide an example of godly living to the one baptised.
  - n. In summary, there is no impediment to the baptism of a *child* of a same-sex married couple, though this would preclude the same-sex married couple themselves from being the *sponsors* while they are continuing to live unrepentantly in a same-sex relationship.

The Board of Assessors wishes to express their appreciation to the Tribunal for the opportunity to discern these responses to the four questions referred to them. We stand ready to offer further details concerning the citations given if required, and trust that these answers prove useful in your further deliberations. We assure the Tribunal of our ongoing prayer and Christian fellowship.

Rev'd Canon Dr Rhys Bezzant  
 Rev'd Dr Andrew Ford  
 Rev'd Dr Martin Foord  
 Rev'd Dr Wei-Han Kuan  
 Rev'd Canon Dr Mark Thompson  
 Rev'd Canon Dr Richard Trist  
 Rev'd Dr Lionel Windsor

2 September 2020

### iii. Extracts from Constitution ss 1–4 and the relevant definitions

## Part 1 The Constitution of the Anglican Church of Australia<sup>1</sup>

### PART I

#### Chapter I. – Fundamental Declarations

1. The Anglican Church of Australia,<sup>2</sup> being a part of the One Holy Catholic and Apostolic Church of Christ, holds the Christian Faith as professed by the Church of Christ from primitive times and in particular as set forth in the creeds known as the Nicene Creed and the Apostles' Creed.
2. This Church receives all the canonical scriptures of the Old and New Testaments as being the ultimate rule and standard of faith given by inspiration of God and containing all things necessary for salvation.
3. This Church will ever obey the commands of Christ, teach His doctrine, administer His sacraments of Holy Baptism and Holy Communion, follow and uphold His discipline and preserve the three orders of bishops, priests and deacons in the sacred ministry.

#### Chapter II. – Ruling Principles

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

<sup>1</sup> The change of name from Church of England in Australia was made by Canon 16, 1966 which came into effect on 24 August 1981, following enactments by the Parliaments of all States and Territories.

<sup>2</sup> See Note 1 above.

and doctrine in this Church, and no alteration in or permitted variations from the services or Articles therein contained shall contravene any principle of doctrine or worship laid down in such standard.

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

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



## iv. Membership of Appellate Tribunal

Tribunal Members: The Hon Keith Mason AC QC, President  
The Hon Richard Refshauge, Deputy President  
The Most Rev'd Dr Phillip Aspinall  
Ms Gillian Davidson  
Professor the Hon Clyde Croft AM SC  
The Rt Rev'd Garry Weatherill

## v. 1998 Lambeth Conference Resolution I.10

### Human Sexuality

This Conference:

- a. commends to the Church the subsection report on human sexuality [1];
- b. 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;
- c. 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;
- d. 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;
- e. cannot advise the legitimising or blessing of same sex unions nor ordaining those involved in same gender unions;
- f. 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;
- g. 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.

## vi. Gafcon Australia, 17 November 2020 Board Statement

*The sheep follow (me) because they know (my) voice ... I have come that they may have life and have it to the full.* John 10:4, 10.

Gafcon Australia exists to promote the gospel of the Lord Jesus Christ through the Anglican Church of Australia. We are convinced that the fullness of life that only Jesus gives is experienced through hearing, trusting and obeying his word of grace and life, in the power of his Spirit and the fellowship of his people. For this reason, the Board of Gafcon Australia expresses its deep regret that the recent majority opinion of the Appellate Tribunal of the Anglican Church of Australia relies upon a disputed definition of the meaning of ‘doctrine’ rather than on a whole-hearted and glad embrace of the life-giving Word of God. In doing so, they have seriously undermined the basis of national unity in our church. We regard their conclusions as erroneous and unconvincing.

A majority of the Appellate Tribunal affirmed that certain legislation passed by two Australian Dioceses was ‘not inconsistent with the Fundamental Declarations and Ruling Principles of the Constitution’. In doing so, the Appellate Tribunal declined to follow advice they had requested from two other Australian Anglican bodies – the House of Bishops and the Board of Assessors. Both of these bodies unanimously affirmed the historic and biblical teaching on personal sexual ethics. The General Synod will respond to the opinion at its meeting in May/June next year. It is possible, indeed likely, that in the meantime some Dioceses will take steps to authorise their own services of blessing of same-sex marriages in the near future.

Around the Anglican Communion where developments of this kind have occurred (notably, the US, Canada, New Zealand and Scotland) orthodox Anglicans have found themselves ostracised or isolated from their own Dioceses and Bishops.

Gafcon Australia assures Anglicans who affirm the Scriptures as ‘the ultimate rule and standard of faith given by inspiration of God and containing all things necessary for salvation’ (to quote the Constitution) that we will support and assist you in maintaining a faithful Anglican witness. If you would like support or advice, please contact us through our website ([gafconaustralia.org](http://gafconaustralia.org)) or email [info@gafconaustralia.org](mailto:info@gafconaustralia.org).

The teaching of Scripture is that while marriage is not necessary for salvation nor for the experience of life to the full, obedience to God’s Word is. The Lord brings about in us what he commands, whatever our marital status or sexuality. The gift of marriage, in accordance with the doctrine of Christ as it is clearly taught in Scripture and expressed in the *Book of Common Prayer* is ‘an honourable estate’ given for the union of one man to one woman for, among other purposes, the raising of children. Likewise, those who are not married, through their union with Christ, are holy and called to lives of chastity and fruitful, joyful service of the Lord.

The advice provided to the Appellate Tribunal by the Board of Assessors and the House of Bishops deserves close reading. The Board of Gafcon Australia thanks the members of the Board of Assessors and the House of Bishops for their clear and faithful exposition of the Scriptures in these matters. We are also grateful for the minority opinion of

the Appellate Tribunal which eschewed the narrow reading of ‘doctrine’ in the majority opinion and upheld the teaching of Scripture. Please read it for your encouragement. All the reports can be found <https://anglican.org.au/governance/tribunals/appellate-tribunal-current-matters/>.

We urge you to join us in prayer for ourselves and our Anglican Church; to continue to repent of the ways in which we fall short of God’s standards, and to humbly and boldly stand upon the sufficiency, authority, truth and beauty of God’s Word. We urge you to make the most of opportunities to engage in Diocesan Synods and other processes to express commitment to the authority of Scripture and the biblical pattern of discipleship, and to ‘exhort and rebuke with all authority’ those who oppose sound teaching (Titus 2:15).

Gafcon Australia gives thanks for all Anglicans who hold to God’s Word and live faithfully and fruitfully in radically counter-cultural ways, including chastity in singleness and faithfulness in biblical marriage. We acknowledge all such brothers and sisters, single, married, same-sex attracted and ‘straight’. You are dear to us and precious to the Lord. We acknowledge that confusion in these vital and personal matters does not serve us well, and we lament the unhappy division and lack of agreement about such basic matters of faith and practice in our church.

Gafcon Australia exists to promote the gospel across our nation and to support faithful Anglican ministry wherever it exists. Particularly in light of these recent events, please contact us at [info@gafconaustralia.org](mailto:info@gafconaustralia.org) if we can assist you in prayer and fellowship.

Gafcon is hosting an Australasian Conference in July 2021. Further information can be found at [gafconaustralia.org/conference2021](http://gafconaustralia.org/conference2021). Please plan to attend as we seek to see the biblical gospel faithfully proclaimed throughout Australia, New Zealand and Polynesia. Please pray for our Anglican Church of Australia as we continue to seek to serve the Lord and his gospel in Spirit and in truth.

The Ven Stephen Carnaby  
Diocese of Tasmania

The Rev Jennifer Hercott  
Diocese of Rockhampton

The Rev Paul Hunt  
Diocese of Adelaide

The Rev Joshua Kuswadi  
Diocese of the Northern Territory

Mrs Fiona McLean  
Diocese of Melbourne

The Very Rev Kanishka Raffel  
Diocese of Sydney

The Rev Trevor Saggars  
Diocese of North Queensland

Dr Laurie Scandrett  
Diocese of Sydney

Dr Claire Smith  
Diocese of Sydney

The Rev Peter Smith  
Diocese of Perth

## vii. Gafcon Australia, December 2020 Commitment Statement

Gafcon Australia's primary desire is for all the Dioceses of the Anglican Church of Australia (ACA) to remain faithful to our Lord by gladly holding to his teaching. We will do everything in our power to support orthodox leaders and to encourage dioceses to maintain fidelity to the Lord and his Word in light of the increasing societal changes especially in relation to marriage, human sexuality and other matters. Our understanding of "orthodox Anglican faith" is expressed in the Jerusalem Declaration. We are part of the world-wide Gafcon movement that represents 70% of the world's worshipping Anglicans, that embraces evangelical, catholic and charismatic Anglicans, and women and men who are ordained.

In light of the Appellate Tribunal majority opinions on the Wangaratta and Newcastle questions,<sup>1</sup> we anticipate that some Diocesan Bishops may now allow blessings of same-sex marriages in their Dioceses. The Tribunal's majority opinion rests on a narrow understanding of "doctrine" in the Constitution and we believe this will encourage clergy to proceed with such blessings. If Bishops promote, or fail to stop this practice, then many orthodox Anglicans will find themselves unable to receive the oversight of their bishop.

We know that some bishops already have failed to discipline clergy for breaking biblical standards of conduct. Some dioceses have changed their official standards (through changes to *Faithfulness in Service*) to allow those who do not practise chastity in singleness to exercise ministry and leadership. We suspect that some of our bishops hold doctrinal positions that are contrary to the formularies of the Anglican Church of Australia.

We recognise that for some orthodox Anglicans these changes will be intolerable. Clergy and lay people will find they cannot accept the leadership and authority of their bishop in these situations and will not be able to submit to the resolutions of their Synods. We know that many Anglican clergy, lay people and congregations will feel they have no other choice than to disaffiliate from the Anglican Church of Australia because of these things.

We affirm the Jerusalem Declaration, which in section 13 says: 'We reject the authority of those churches and leaders who have denied the orthodox faith in word or deed'. In light of this, there are at least five possible scenarios where faithful Anglicans will believe they can no longer accept the ministry of their bishop.

1. Where a Bishop no longer personally believes the doctrine of the ACA,<sup>2</sup> (even though they might not act on this or require others to do so).
2. Where a Bishop fails to act in restraining or disciplining a clergy person from acting against the doctrine of the ACA.
3. Where a Synod adopts a resolution contrary to the doctrine of the ACA and a Bishop allows actions consistent with that resolution.

<sup>1</sup> Regarding the constitutionality of a regulation for the Blessing of Persons Married According to the *Marriage Act 1961*, (Wangaratta) and the proposed Clergy Discipline Ordinance 2019 Amendment Ordinance 2019 (Newcastle).

<sup>2</sup> As it was commonly understood prior to the Appellate Tribunal majority Opinion on Wangaratta, as evidenced by the unanimous submission by the House of Bishops and the Board of Assessors.

4. Where the ACA changes its doctrine or discipline to a position that is not biblical.<sup>3</sup>
5. Where a Bishop disciplines a clergyperson for acting consistently with the doctrine of the ACA.

Some clergy and lay people, in good conscience, will seek to disaffiliate from their diocese/bishop when they experience one of the scenarios above. Others will want to find a way forward within the structures of the ACA and will need support and assistance in engaging and responding to the bishop and diocese.

Gafcon Australia commits itself to supporting orthodox and faithful Anglicans in each of these situations. While we hope that none of this will be necessary, we make our commitment to do the following as need arises.

### **Proactively Promote Orthodox Anglicanism**

1. Gafcon Australia will continue to host conferences to promote orthodox Anglican faith and provide fellowship and encouragement.
2. Gafcon Australia will encourage the development of local Gafcon groups in different locations for fellowship and support.
3. Gafcon Australia will continue to support and encourage orthodox Anglicans who choose to remain within the Anglican Church of Australia, even when their bishops have acted in an unorthodox manner.
4. Gafcon Australia will encourage orthodox Anglicans to remain part of the Anglican Church of Australia if they have an orthodox bishop, unless the ACA changes its doctrine.

### **Respond to specific issues**

5. Where breaches of doctrine, discipline, faith and order occur, Gafcon Australia will encourage bishops to act in accordance with the doctrine of the Church.
6. Gafcon Australia will support Diocesan and Special Tribunals where applicable, to bring the disciplinary process to bear on bishops and clergy who do not uphold the doctrine of the ACA. We will resource, support and encourage people bringing charges in those forums.
7. Gafcon Australia will participate in any tribunal processes that are available to us, making submissions that uphold and promote the biblical doctrine of our Church. We will represent our members' interests in this.
8. Gafcon Australia Board members and Gafcon Ambassadors will maintain support and contact with Anglicans in dioceses in Australia who find themselves marginalised by the actions of their bishops.
9. If needed, Gafcon Australia will encourage other avenues for the maintenance of order in the Church, and the participation of orthodox Anglicans in our Dioceses through consideration of alternatives like "Alternative Episcopal Oversight" or agreed terms of separation.

3 For many, the recent Opinion of the Appellate Tribunal is an example.



## Assist those who disaffiliate

10. Gafcon Australia will provide a Mentor for support and encouragement to congregations, clergy, or groups of Anglicans who are considering disaffiliation from their bishops and/or dioceses.
11. If a sufficient number of churches and clergy disaffiliate from the ACA, Gafcon Australia will seek the approval of the Gafcon Primates Council to establish an Extra-Provincial Diocese (EPD) for Australia authorised by the Gafcon Primates.
12. The Gafcon EPD will be a parallel jurisdiction with the existing Anglican Church of Australia and have a geographic spread across the whole country. It is not envisioned that this will include Anglicans from Dioceses where sound doctrine is upheld.
13. The Gafcon EPD will be governed by its own Constitution and Canons, appoint a Registrar, and will elect its own Bishop, who will ordain, license, and pastor its clergy and congregations.
14. The Gafcon EPD will establish links of communion with orthodox bishops and dioceses within the ACA, as well as among the Gafcon Global networks. It will seek to establish new churches in areas where there are few orthodox Anglican Churches.

## What you can do

1. Pray for our Church, including your local vicar/rector, your diocesan leadership, General Synod representatives, and the Board of Gafcon.
2. If you are in leadership, commit to preaching and teaching faithfully and graciously “the whole counsel of God” (Acts 20:27), including those issues about which there is controversy.
3. Give financially, if you are able, to support the work of Gafcon. Details of how to do this are on our website here.
4. Encourage others to sign up to support Gafcon. This can be done online here.

We thank God for our partnership with you in the gospel and the fellowship we enjoy.

The Board of Gafcon Australia

December 2020

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**T**he COVID-19 pandemic has put many important aspects of life on hold and, at the time of publication, is not yet behind us. The toll has been heavy. The pandemic has also prevented us from gathering as the General Synod of the Anglican Church of Australia in 2021, and so, until now, we have been unable to consider and respond to the surprising Majority Opinion from the Appellate Tribunal validating a liturgy for the blessing of a same-sex marriage.

This volume of essays is published in the hope that all Australian Anglicans and especially members of General Synod will be equipped and encouraged to hold fast to the historic Christian teaching about marriage and to hold out the pure gospel of God's grace in Christ to all people.