

34/99 Establishment of Congregations as Parishes

(A further report from the Standing Committee.)

Background

1. Following the Diocesan Secretary's receipt of submissions in response to resolution 34/99, the Standing Committee asked that the Committee which prepared the bill for the "Recognised Churches Ordinance" (the Rev Phillip Jensen, Mr Neil Cameron, Archdeacon Trevor Edwards and Bishop Ray Smith) consider the submissions and prepare such amendments to the bill as it considered appropriate in light of the issues raised.
2. This report outlines the Committee's responses to the submissions and the amendments it recommends to the form of the bill which was the subject of submissions. A revised draft of the bill marked up to show the recommended amendments is circulated with this report. References in this report to clauses are references to clauses in the revised bill.
3. By reason of absence, Archdeacon Edwards was unable to participate in the work of the Committee in considering the submissions and preparing amendments to the bill.

General Comments

4. The Committee reported its appreciation of the time and effort given by those persons and bodies who made submissions, each of which was read and evaluated. The submissions clarified the Committee's thinking regarding the purpose of the bill and contained a number of helpful suggestions which the Committee considered would facilitate the proper functioning of the bill.
5. However, the Committee considered that a number of submissions failed to understand that the purpose of the bill is to recognise the reality of pre-existing church groups and not to provide for mechanisms for establishing or developing such groups. This misunderstanding was perhaps most apparent in concerns raised about the role of regional councils under the bill. The bill does not seek to interfere with the ability of a regional council to establish and develop Christian fellowships in its region, some of which may, in time, wish to seek recognition in their own right under the bill.
6. The Committee conceded that this misunderstanding may have arisen in part due to the title given to this matter, "Establishment of Congregations as Parishes".

Role of the Archbishop

7. The Committee noted comments that the Archbishop should retain an appropriate level of discretion in deciding whether to license a person as a minister of a recognised church. The Committee agreed that the Archbishop's discretion in licensing should not be diminished.
8. The Committee considered whether the bill as originally drafted had the effect of diminishing the Archbishop's discretion. It was noted that under the bill, a priest would be an "eligible person" for appointment as a minister of a recognised church. If a priest was proposed to be the minister of a recognised church, the Archbishop would be obliged to offer to appoint that person as the minister unless he was satisfied that there was "good and sufficient reason" for refusing to do so.
9. To ensure the Archbishop's rights and prerogatives in licensing are preserved, the Committee proposed that the definition of "eligible person" in clause 2(1) be amended by adding the words "and who is otherwise acceptable to the Archbishop" at the end of that definition. This further qualification as to who would be an eligible person would apply to both persons in priest's orders and lay persons.
10. An important consequence of broadening the Archbishop's discretion in this way is that the Archbishop will retain a significant degree of control as to whether a church is recognised under the bill. Under clause 7(a) the willingness of the Archbishop to appoint the person proposed to be the minister is a criteria for

recognition. Another consequence is that the Archbishop can exert at least the same degree of control over the doctrine and use of Anglican formularies in a recognised church as he does for existing parish ministries through his appointment of the minister. The doctrine and use of Anglican formularies in recognised churches was raised as a matter of concern in some submissions.

11. The Committee also noted comments in one submission regarding the appropriateness of the word “must” in describing the action to be taken by the Archbishop in determining whether a person is an eligible person and in appointing and licensing that person as minister of a recognised church. Without wishing to change the sense that the word “must” conveys, the Committee agreed that the word “will” should be used instead to reflect appropriate relational language for dealings with the Archbishop (clauses 6 and 9).

Process for Recognition

12. The Committee accepted as helpful suggestions that the bill provide for a greater level of consultation and communication with parishes and other bodies affected by a proposal for recognition. Consultation should occur prior to proposals being made and during the investigation of proposals.
13. In particular the Committee accepted the following -
 - (a) a new part should be included in the bill providing that prior to a person making a proposal for recognition, the person would be expected to consult with the parish and the regional council in which the regular meeting place is situated (clause 3(2));
 - (b) a proposal for recognition should therefore include a summary of the consultation undertaken for the purposes of the new part (clause 4(2)(i));
 - (c) a proposal for recognition should include a brief history of the church’s activities during the 12 month period prior to the date of the proposal (clause 4(2)(c)(iii));
 - (d) a copy of any proposal for recognition should be sent to the parish in which the regular meeting place of the church is situated and to each parish adjacent to that parish (clause 4(4)(c));
 - (e) regional councils should be entitled to consult with parishes and other organisations following the receipt of any proposal for recognition (clause 5(2));
 - (f) notification that a church has been recognised should also be sent to each parish adjacent to the parish within which the meeting place of the recognised church is situated (clause 8(2)(a)(v));
 - (g) on any appeal to the Standing Committee of a decision of a regional council regarding recognition, representatives from the regional council on the Standing Committee should be entitled to make representations regarding the appeal prior to the Standing Committee deciding whether to exercise its powers on appeal (clauses 12(2) and (3)).
14. The Committee accepted that regional councils should be entitled to make proposals for recognition (clause 4(1)(b)). This has necessitated a number of consequential amendments to the bill (clauses 3(2), 4(2)(h), 4(3)(b), 4(4)(b), 5(3), and 8(1)).
15. The bill also includes a new provision requiring parishes or Anglican clergy who intend to plant a church in the Diocese with a view to having it recognised, to consult with the regional council and episcopal leadership regarding this intention (clause 3(1)).

Criteria for Recognition

Objective vs Subjective Criteria

16. The Committee noted the suggestion in some submissions that the role of the regional council should not be limited to declaring that a church be recognised if it meets certain minimum criteria but should also involve the regional council determining whether the church should be recognised based on other subjective criteria. The Committee considered that the introduction of subjective criteria in determining whether a church should be recognised would have the effect of increasing rather than decreasing any tensions in the Diocese. The Committee therefore considered that objective criteria for recognition under the bill should be retained.

Minimum Number of Members

17. A number of submissions suggested that the minimum number of members to satisfy the criteria for recognition was too high. The Committee accepted that the number of members to satisfy the criteria for recognition should be reduced from 120 to 80 (clause 7(c)). However the Committee did not accept that the appropriate level of membership needed to be demonstrated for a period exceeding the 3 month period to the date of the proposal for recognition.

Distinctiveness

18. The Committee noted comments that the criteria for distinctiveness was contrary to the inclusive nature of gospel ministry. However the Committee reiterates comments made in the original report (printed on pages 484 to 487 inclusive of the 2000 Yearbook) that a reason for requiring an element of distinctiveness is to address the pastoral implications of recognising independent ministries that will necessarily operate within areas traditionally viewed as the responsibility of the incumbent of the local parish. Accordingly the Committee considers that the element of distinctiveness should be retained as a criteria for recognition under the bill.
19. The Committee noted one suggestion that the definition of "distinctiveness" in the bill should also refer to "geographical" distinctiveness. The Committee was not certain what was meant by geographical distinctiveness and accordingly did not accept the suggestion.

Suitable Minister

20. The Committee noted the comments made regarding the appointment and licensing of a suitable person as the minister of a recognised church. The Committee considered that the suggested amendment referred to in 9 above adequately addressed this matter.

Financial Criteria

21. The Committee acknowledged comments from the Sydney Anglican Indigenous Peoples' Ministry Committee that the financial criteria for recognition are beyond the capacity of indigenous congregations. However the Committee considers the financial capacity of such congregations should be dealt with on an exceptional basis.

Meeting Places

22. The Committee agreed that the provisions relating to the movement of meeting places should be amended to require consultation with the relevant parishes and regional councils prior to a meeting place being moved (clause 17).
23. The Committee also noted comments in one submission that multiple meeting places of a recognised church be recognised under the bill. However the Committee considered that it was unnecessary to recognise the existence of multiple meeting places for a recognised church provided the principal "meeting place" was nominated for the purposes of the bill.

For and on behalf of the Standing Committee

ROBERT WICKS
Legal Officer

5 October 2000