

## 43/94 Amendment to Section 26 of the Anglican Church of Australia Trust Property Act 1917

(A report from the Standing Committee.)

### Introduction

1. Section 26 of the Anglican Church of Australia Trust Property Act 1917 (the "1917 Act") empowers the synod of each diocese in New South Wales to direct, by ordinance, that church trust property held for the purposes of that diocese be sold, leased, mortgaged or otherwise dealt with. The section also permits the synod, by ordinance, to provide for the application of real and personal property arising from any such dealing. The text of section 26 is set out on page 168 of *The Seventh Handbook*.
2. The section contains a proviso which applies in the case of 2 dioceses, Sydney and Canberra and Goulburn. Under the proviso no ordinance in respect of property held for the sole benefit of a particular parish shall receive the bishop's assent under the Anglican Church of Australia Constitutions Act Amendment Act of 1902 -
  - (a) without the prior written consent of the majority of the members of the parish council (if any) for the time being of the parish; and
  - (b) in the case of property gratuitously granted or assured within the 20 years preceding by any private donor, without the prior consent of such donor, if living.

### Proposals to Amend Section 26

3. There have been concerns that the proviso to section 26 unduly inhibits ministry since it enables a small number of persons to prevent better utilisation of church property. These concerns were noted in the report on the *Development of Parish Property and Ministry* which was presented to the Synod in 1992 and is published on pages 464 to 474 inclusive of the 1993 Year Book.
4. By resolution 29/92 the Synod resolved -
 

"Noting the views expressed in the report on the *Development of Parish Property and Ministry*, concerning the need for Section 26 of the Anglican Church of Australia Trust Property Act 1917 to be more flexible, this Synod requests Standing Committee to promote whatever amendments may be necessary to that Act to allow the Synod of the Diocese in some cases to determine on matters relating to property held for the benefit of a particular parish and to prepare for consideration at the first ordinary session of the next Synod an ordinance embodying the principles to be observed and procedures to be adopted in the exercise by Synod of the power envisaged to be conferred by the amendment to the Act."
5. The Standing Committee appointed a committee to make recommendations about how resolution 29/92 might be implemented. The committee's comments and recommendations are referred to in the report entitled "Proposed Amendment of Section 26 of the 1917 Act" received by the Synod in 1993 and published on pages 389 to 399 inclusive of the 1994 Year Book.
6. In substance, the committee made 3 recommendations which were adopted by the Standing Committee-
  - (a) that the Diocese of Canberra and Goulburn be asked to join in the request to the Attorney-General for the repeal of the proviso to section 26 (the "First Recommendation");
  - (b) that an ordinance be promoted to the Synod amending the Delegation of Powers and Ordinance Procedure Ordinance 1973 (the "1973 Ordinance") to remove Standing Committee's power to make ordinances under section 26 in respect of church trust property held for the sole purpose of a particular parish if the consent of the majority of the parish council (if any) of the parish to the ordinance has not been obtained (the "Second Recommendation"); and
  - (c) that the Archbishop write to the Attorney-General seeking the repeal of the proviso to section 26.
7. The Archbishop wrote to the Bishop of Canberra and Goulburn in the terms suggested by the First Recommendation and the Synod of the Diocese of Canberra and Goulburn, by resolution 787/93, resolved to support Sydney's request that the proviso to section 26 be repealed.
8. In 1994 the Synod changed its mind, seeking not the repeal of the proviso of section 26 but rather an amendment. Specifically, the Synod resolved, by resolution 43/94, -
 

"Synod requests the Standing Committee, in promoting to the State Parliament the amendment to section 26 of the Anglican Church of Australia Property Trust Act 1917 pursuant to Synod resolution 29/92, to include in the amendment sought a provision that an ordinance dealing with property held for the sole benefit of a parish may not be assented to, in any case where the consent of a majority of the members of the Parish Council has not been received, unless that

ordinance is approved by a majority of not less than two-thirds of the members of Synod present and voting."

9. In 1995 the Synod passed a bill to amend the 1973 Ordinance in accordance with the Second Recommendation.

10. In January 1996 the Archbishop wrote to the Attorney-General requesting an amendment to the proviso to section 26 in accordance with resolution 43/94. The Bishop of Canberra and Goulburn also wrote to the Attorney-General requesting the repeal of the proviso to section 26 in accordance with resolution 787/93 of the Synod of the Diocese of Canberra and Goulburn.

11. The Bishop of the Diocese of Canberra and Goulburn has now indicated that it does not want the proviso to section 26 to be repealed in so far as it applies to that Diocese.

12. The Attorney-General has approved the request for an amendment to the proviso to section 26 in so far as that proviso applies to the Diocese of Sydney. However, the Attorney-General has asked that the Synod approve, by resolution, the form of the amendment proposed to be made.

### **Proposed Amendment**

13. Parliamentary Counsel has prepared a bill to amend section 26 as follows -

(a) present section 26 would become section 26(1) and the reference to the Diocese of Sydney in the proviso would be deleted;

(b) a new section 26(2) would be inserted in the following terms -

"Despite subsection (1), an ordinance in relation to property held for the sole benefit of some particular parish in the Diocese of Sydney may only be assented to under the *Anglican Church of Australia Constitutions Act 1902* -

(a) either -

(i) with the written consent of a majority of the members of the parish council (if any) for the time being of the parish, or

(ii) if the ordinance was passed by at least two-thirds of the members of the synod of the Diocese of Sydney present and voting, and

(b) with the written consent of any living private donor who gratuitously granted or assured the property to the parish within the period of 20 years before the date of assent to the ordinance."

### **Effect of the Proposed Amendment**

14. If passed, new section 26(2) will permit the Archbishop to assent to an ordinance to permit the sale, mortgaging, leasing or other dealing with church trust property held for the sole benefit of a particular parish even if the parish council for the time being of the parish has not given its written assent to the ordinance. As is noted in item 2 above, this is not possible under the exiting provisions of section 26. However, under the proposed amendment, if the consent of the majority of the parish council is not obtained, the Archbishop will only be able to assent to such an ordinance if it is passed by at least two thirds of the members of the Synod present and voting.

For and on behalf of the Standing Committee

MARK PAYNE  
*Diocesan Secretary*

6 October 1998