

47/18 Property Use Policy

8/17 Statement of Anglican Doctrine of Marriage

(A report of the Standing Committee.)

Key Points

- A policy of the Synod, including the Property Use Policy, has a similar status to a resolution of the Synod insofar as it represents the views of a majority of the members of the Synod at the time the policy was agreed. However ordinances bind diocesan bodies according to the terms of the relevant power or powers relied on. While the terms of the Property Use Policy are not of themselves binding on diocesan bodies, clause 4 of the *Sydney Anglican Use of Church Property Ordinance 2018* gives the terms of the Policy particular importance as part of a binding ordinance of the Synod.
- The inclusion of the doctrine of marriage in the Statement of Faith set out in Appendix 3 of the Governance Policy for Diocesan Organisations, without the inclusion of a range of currently contested doctrines on other matters, would have the effect of fixing the statement as an expression of concern in relation to one doctrine at a particular point in time. It is undesirable and impractical to attempt to itemise in the Statement of Faith a list of all other doctrinal matters currently relevant and contested in our society. Furthermore, the primary purpose of the Statement of Personal Faith is to require that those who serve in key roles in our organisations are Christians, and including specific Anglican doctrines in the Statement would preclude members of other denominations.
- The Statement of Faith should be amended so that a person also affirms that they will endeavour to fulfil their duties in accordance with the “other applicable ordinances and policies of the Synod”. A corresponding change is proposed to the Statement of Support for Christian Ethos.
- The Committee also proposes certain amendments to the Property Use Policy to make clear that the Policy does not require disengagement and distancing from the community around us.

Purpose

1. The purpose of this report is to respond to requests made by the Synod in relation to its Property Use Policy under Resolution 47/18 and in relation to the statement of our Anglican Doctrine of Marriage under Resolution 8/17.

Recommendations

2. Synod note this report.
3. Synod consider the following motion to be moved at the forthcoming session of the Synod “by request of the Standing Committee” –

‘Synod agrees to amend its Property Use Policy by inserting the following as a new paragraph 10(a) –

“This policy is not intended to require a withdrawal from, or the exclusion of, those who do not share our doctrines, tenets and beliefs. Rather, we should welcome to our properties those who do not share our doctrines, tenets and beliefs, to the fullest extent possible, yet in a way that does not cause our doctrines, tenets and beliefs to be contravened or compromised. The mere presence of those who do not share our beliefs or the mere expression of beliefs we do not share, will not contravene this policy. However allowing our property to be used for the promotion or propagation of such beliefs does. For example, it does not contravene our doctrines, tenets and beliefs for a resident of an Anglican retirement village who is an adherent of another faith to practise their faith in the privacy of their own residence, but it would be a contravention if the retirement village were to allow a service of public worship for those of that faith to be held.”

4. Synod consider the following motion be to moved at the forthcoming session of the Synod “by request of the Standing Committee” –
- ‘Synod agrees –
- (a) to amend the Statement of Personal Faith set out in Appendix 3 of the Governance Policy for Diocesan Organisations by amending paragraph 3 of that statement as follows -

“I shall endeavour to fulfil my duties as a member/the Chief Executive Officer [delete whichever is not applicable] of the [insert name of board] in accordance with its Christian ethos, ~~and~~ its constituting ordinance, and other applicable ordinances and policies of the Synod.”, and
 - (b) to amend the Statement of Support for Christian Ethos set out in Appendix 4 of the Governance Policy for Diocesan Organisations by amending paragraph 2 of that statement as follows –

“I shall endeavour to fulfil my duties as a member of the School Council to which I am elected in accordance with its Christian ethos, ~~and~~ its constituting ordinance, and other applicable ordinances and policies of the Synod.”
5. If amendments in or to the effect of the above are made to one or both of the Property Use Policy and the Governance Policy for Diocesan Organisations, Synod consider a suitable form of the following motion at the forthcoming session of Synod “by request of the Standing Committee” –
- ‘Synod –
- (a) requests that the amended Property Use Policy be circulated to all applicable diocesan bodies together with the amended Statements of Personal Faith and Support for Christian Ethos under the Governance Policy for Diocesan Organisations,
 - (b) requests that diocesan bodies ensure they continue to comply with the requirements of applicable ordinances and policies of the Synod, including the Property Use Policy, and
 - (c) requests that, where applicable, the form of the Statement of Personal Faith required to be signed by those to be elected or appointed as members of the boards or councils of diocesan bodies or as the Chief Executive Officer of such bodies be updated to the amended form in their constituting ordinances,
 - (d) in other cases, notes its expectation under the Governance Policy for Diocesan Organisations that those to be elected or appointed as members of the boards or councils of diocesan bodies or as the Chief Executive Officer of such bodies will sign the Statement of Personal Faith or, if applicable until 1 July 2020, the Statement of Support for Christian Ethos in the amended form, and
 - (e) requests further feedback from diocesan bodies to ensure the Property Use Policy remains an effective tool for ensuring our doctrines, tenets and beliefs are consistently upheld across the whole of the undertaking of the Diocese.’

Background

6. In 2018, the Synod passed the *Sydney Anglican Use of Church Property Ordinance 2018* and the related Property Use Policy. The resolution to pass the policy included a request for feedback and review during the first year of operation of this new policy –
- 47/18 Property Use Policy**
- Synod passes the *Property Use Policy* as a Policy of the Synod, and requests –
- (a) Synod members to provide feedback on the policy to the Diocesan Secretary by 28 February 2019, and
 - (b) Standing Committee to review the policy, including with reference to Resolution 8/17, and bring recommendations to the next ordinary session of the Synod.
7. As specified in clause (b) of resolution 47/18, the review of the policy was to include further consideration of resolution 8/17 from the previous year –

8/17 Statement of Anglican doctrine of marriage

Synod –

- (a) requests that Standing Committee appoint a committee of suitably qualified persons to consider whether the Diocesan Education Policy, the Corporate Governance Policy Statement of Faith, or any other relevant diocesan policies, statements or ordinances should be amended to state formally our Anglican doctrine that marriage is the union of a man and a woman for life to the exclusion of all others, so as to assist the ability of our Anglican schools and other organisations to maintain that it is a genuine, legitimate and justified occupational requirement for their board members, principals, executive officers and other relevant staff and office holders to hold to this traditional Christian belief about marriage, in order to maintain the Christian religious ethos of our institutions,
 - (b) affirms that such a committee could also consider any other core doctrinal matters currently relevant and contested in our society,
 - (c) encourages Standing Committee to consider making any amendments suggested by the committee, and
 - (d) asks that this be treated as a matter of urgency.
8. The Standing Committee resolved in November 2018 that the committee that had prepared the Property Use Policy in 2018 be reconvened to conduct the review and bring a report to the Standing Committee. The Committee that met to conduct this review comprised the following -
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| Bishop Michael Stead (Chair) | Mr Stephen Kinsella (EdComm) |
| Mr Robert Wicks | Mr Grant Millard (Anglicare) |
| Assoc Professor Neil Foster | The Rev Michael Kellahan |
| Mr Max Caddy (for the CEO of the ASC) | Dr Mark Thompson |
| Dr Ed Loane | |
9. At its meeting in June 2019, the Standing Committee requested that a committee appointed by the Chancellor bring a report to the next meeting clarifying the extent to which the requirements of the *Sydney Anglican Use of Church Property Ordinance 2018* and the policy made under that ordinance are applicable to or binding on churches, schools and organisations. This work was also referred to the Committee reviewing the Property Use Policy.

Extent to which the Property Use Policy and Ordinance are applicable or binding

10. The Committee considered it is appropriate to consider first the extent to which the requirements of the *Sydney Anglican Use of Church Property Ordinance 2018* and the Property Use Policy referred to in that ordinance are applicable to or binding on churches, schools and organisations.
11. The application of the Ordinance and Policy and their capacity to bind are separate but related questions.

Application of ordinance and policy

12. The *Sydney Anglican Use of Church Property Ordinance 2018* applies to Diocesan bodies.
13. The Property Use Policy applies more broadly to Diocesan bodies and Anglican bodies.
14. A Diocesan body means any parish of the Diocese and any body corporate, organisation, school or association that exercises ministry within or on behalf of the Diocese –
 - (i) which is constituted by ordinance or resolution of the Synod,
 - (ii) in respect of whose organisation or property the Synod may make ordinances, or
 - (iii) which is a trustee of Church trust property.
15. An Anglican body means any body which has charitable purposes that include purposes for or in relation to the Anglican Church of Australia, which is not a Diocesan body, but is situated in the Diocese and the

governing body of the body has resolved to adopt this policy as amended from time to time as a policy of the body.

16. It is important to note that the application of the Policy to a (non-diocesan) Anglican body requires the agreement of the governing board or council of that body.

Extent to which the policy and ordinance are binding

17. A policy of the Synod, including the Property Use Policy, has a similar status to a resolution of the Synod insofar as it represents the views of a majority of the members of the Synod at the time the policy was agreed. While there is an expectation that bodies which are constituted by the Synod or in respect of whose property the Synod may make ordinances (ie. diocesan bodies) will follow the policies of the Synod, a policy of the Synod is not, of itself, binding on such bodies. An example of such a policy is the Synod's Governance Policy for Diocesan Organisations.
18. The Synod does however have certain powers to make ordinances which are binding on diocesan bodies (eg. s.4 Anglican Church of Australia Constitutions Act 1902; s.24 Anglican Church of Australia Trust Property Act 1917; ss.6(2) and 10(1) Anglican Church of Australia (Bodies Corporate) Act 1938).
19. The extent to which these ordinances bind diocesan bodies varies according to the terms of the relevant power or powers relied on.
20. In contrast to its policies (which the Synod expects will be followed by those to whom the policies apply), the Synod reserves its ordinance making powers for matters which are sufficiently important to require compliance. Examples of ordinances that make provision for matters of importance for diocesan bodies, in addition to their respective constituting ordinances, include the *Accounts, Audits and Annual Reports Ordinance 1995*, the *Anglican Schools Ministry Ordinance 2016* and the *Sydney Anglican Use of Church Property Ordinance 2018*.

Interaction between the Property Use Policy and Ordinance

21. The key provision of the *Sydney Anglican Use of Church Property Ordinance 2018* is clause 4 which is as follows –
- (1) A Diocesan body must only use or allow the use of Church property for acts or practices which conform to the doctrines, tenets and beliefs of the Diocese.
 - (2) A Diocesan body conforms to the doctrines, tenets and beliefs of the Diocese if it undertakes or authorises acts or practices which –
 - (a) are consistent with the [Property Use] Policy, or
 - (b) involve not allowing Church property to be used for an activity that is inconsistent with the Policy.
 - (3) Any dispute about whether a use or proposed use of Church property conforms to the doctrines, tenets and beliefs of the Diocese is to be determined by the Archbishop.
22. It follows that while the terms of the Property Use Policy are not of themselves binding on diocesan bodies, clause 4 of the Ordinance gives the terms of the Policy particular importance as part of a binding ordinance of the Synod.
23. The reason for giving the terms of the Property Use Policy particular importance are set out in full in the Committee's previous report to the Synod in 2018 entitled *8/17 Statement of Anglican doctrine of marriage*. In summary, it was considered that the most appropriate way to address a number of threats to maintaining the Christian ethos of our Anglican institutions was through the implementation of a Property Use Policy, which would (at the same time) –
- (a) articulate certain "doctrines, beliefs and tenets" to facilitate reliance on the balancing clauses in anti-discrimination legislation, and
 - (b) provide clear guidance for ministers, wardens and board members as to the appropriate and inappropriate uses of church property, and
 - (c) be binding on members of boards in their decisions about church property.

24. In view of the above, the Committee wishes to draw attention to the significance of the consultation that has been undertaken with diocesan bodies to ensure the Property Use Policy is an effective tool for upholding our doctrines, tenets and beliefs across the whole of the undertaking of the Diocese. The Committee is grateful to those diocesan bodies which have contributed feedback as part of this consultation process, and encourages those bodies yet to consider the Policy to engage in any further consultation on its terms.
25. The remainder of this report outlines the Committee's finding and recommendations in relation to the latest consultation process arising from Synod resolution 47/18.

Expanding the Statement of Faith

26. Feedback received by the Committee argued that the diocesan Statement of Personal Faith should be expanded to include explicit reference to our Anglican doctrine that marriage is the union of a man and a woman for life to the exclusion of all others. The Statement of Personal Faith is a part of the Governance Policy for Diocesan Organisations. Key office holders are required to affirm commitment to the Statement of Personal Faith prior to commencing in a governance role. The purpose of the expansion would be to enable Anglican schools and other organisations to require that board members, principals and executive officers hold this traditional Christian belief.
27. As discussed above, the Property Use Policy applies to all Sydney Diocesan bodies. It is likely that the obligation under clause 4 of the *Sydney Anglican Use of Church Property Ordinance 2018* requiring the use of church property to conform to the doctrine, tenets and beliefs of the Diocese, including the traditional Christian view of marriage, is binding in certain circumstances on diocesan bodies and those that govern or otherwise lead such bodies. However, it was argued, this does not go far enough, because it would still allow (for example) a school principal to promote a personal belief about marriage that was opposed to the doctrine of the diocese, provided this did not involve the use of school property.

28. It was suggested that paragraph 2 of the statement of faith be modified as follows –

2. In particular I believe –
- (a) that God's word written, the canonical Scriptures of the Old and New Testaments, is the supreme authority in all matters of faith and conduct;
 - (b) that there is only one way to be reconciled to God which is through his Son, Jesus Christ, who died for our sins and was raised for our justification;
 - (c) that we are justified before God by faith only; and
 - (d) that marriage is the union of a man and a woman for life, to the exclusion of all others.

29. The Committee recognised that it is important to ensure that those who lead our organisations personally hold our doctrines, tenets and beliefs (and not merely that they are willing to use Church property in accordance with a diocesan policy). However, the committee concluded that adding a statement about marriage to section 2 of the Statement of Personal Faith was not the appropriate way to do this. Paragraph 1 of the Statement of Personal Faith defines the Christian faith with reference to the Nicene Creed and Apostles' Creed, and paragraph 2 adds three further (protestant and evangelical) core beliefs that are not sufficiently articulated in the creeds - the authority of the scriptures, the atonement and justification by faith only. As important as the doctrine of marriage is, it is not in the same category as these core beliefs.
30. The Committee considered that the inclusion of the doctrine of marriage in the Statement of Faith, without the inclusion of a range of currently contested doctrines on other matters, for example on the human person (which touches on the on-going debates in relation to abortion, euthanasia and gender), would have the effect of fixing the statement as an expression of concern in relation to one doctrine at a particular point in time. The Committee considered this would be undesirable and over time potentially problematic. For similar reasons, the Committee considered it undesirable and impractical to attempt to itemise in the Statement of Faith a list of all other doctrinal matters currently relevant and contested in our society.
31. In an attempt to avoid these difficulties, the Committee considered the following amendment to paragraph 3 of the Statement of Faith as an alternative means of achieving a similar end–

3. I affirm the doctrines, tenets and beliefs of the Anglican Church of Australia in the Diocese of Sydney and acknowledge the requirement of the diocesan Property Use Policy that church property is not to be used for purposes which contravene the doctrines, tenets and beliefs expressed in that policy. I shall endeavour to fulfil my duties as a member/the Chief Executive Officer [delete whichever is not applicable] of the [insert name of board] in accordance with its ~~Christian~~ Anglican ethos and its constituting ordinance.

32. Currently paragraph 3 is a commitment to act in accordance with the “Christian ethos and constituting ordinance” of the diocesan body. Modifying paragraph 3 in this way would not only draw attention to the requirements of the Property Use Policy, but would also require a signatory to affirm that they hold the doctrines, tenets and beliefs of the Anglican Church of Australia in the Diocese of Sydney. There would also be a consequential change from “Christian ethos” to “Anglican ethos” in the existing wording of paragraph 3.
33. The doctrines, tenets and beliefs expressed in the Property Use Policy include the following –
- We believe in one God, who is Father, Son and Spirit. Our triune God alone is to be worshipped, in the way he requires. There is only one way of salvation, which comes through faith in the atoning work of Jesus Christ. The gospel calls us to turn from sin and abandon our idolatrous or syncretistic worship, and to worship the true God, through Jesus Christ, by the Holy Spirit. (Paragraph 11)
 - We believe that all human beings are uniquely created in the image of God, loved by God and precious to him. We believe that God created humanity with two complementary sexes – male and female – and that both male and female are equally made in God’s image. We believe that God made people of all races and abilities as equal in his sight, and offers salvation through faith in the atoning work of Jesus Christ to all people without distinction. We believe that God alone determines the beginning and end of life. (Paragraph 15)
 - We believe that there are only two expressions of faithful sexuality: marriage between a man and a woman or abstinence in singleness. (Paragraph 18)
 - We believe that the gospel of salvation brings freedom from our captivity to sin. Christian freedom is not a freedom to indulge the sinful nature. Rather, Christians should seek to throw off everything that hinders and the sin that so easily entangles and should seek not to cause others to sin by leading them into temptation. (Paragraph 21)
34. However the Archbishop has expressed the view that it is not appropriate to amend the Statement of Personal Faith in this way because this misunderstands the purpose of this statement. In the Archbishop’s view, the purpose of the Statement of Personal Faith is to require that those who serve in key roles in our organisations are Christians. They may be Anglican Christians, but the Statement of Personal Faith currently does not require this. Sections 1 and 2 are a statement of reformed protestant Christian faith, which could be signed (for example) by Presbyterians and Baptists.
35. The Archbishop has drawn attention to the fact that a requirement that all board members etc. “affirm the doctrines, tenets and beliefs of the Anglican Church of Australia in the Diocese of Sydney” would preclude Baptists (who reject infant baptism) and Presbyterians (who do not recognise bishops as an order of ministry) from serving on our boards or as heads of our schools and diocesan organisations. Furthermore, requiring lay board members and heads to affirm Anglican doctrine would be a significant departure from Anglican practice. In contrast to ordained Anglican ministers, who are required to subscribe to the doctrines of the church, lay people have never been required to subscribe or otherwise affirm the doctrines of the church in order to qualify for membership in the church.
36. In the view of the Archbishop, a better way to ensure that board/council members are aware of their obligations to comply with the obligations to comply with the Property Use Policy is to make this explicit in the constituting ordinance of each organisation, using a variation on the form of words in the Arden Anglican School Ordinance recently passed by the Standing Committee.

The Council shall comply with all ordinances and policies of the Synod applying to the Council (as amended from time to time), including –

- (a) the *Accounts, Audits and Annual Reports Ordinance 1995*,
- (b) the *Anglican Schools Ministry Ordinance 2016*, and
- (c) the *Sydney Anglican Use of Property Ordinance 2018*

37. In view of the matters outlined above, the Committee has concluded that the following modest change should be made to the wording of paragraph 3 of the Statement of Faith in Appendix 3 of the Synod's Governance Policy –
- "I shall endeavour to fulfil my duties as a member/the Chief Executive Officer [delete whichever is not applicable] of the [insert name of board] in accordance with its Christian ethos, ~~and its constituting ordinance,~~ and other applicable ordinances and policies of the Synod."
38. There would also be the following corresponding change to paragraph 2 of the Statement of Support for the Christian Ethos in Appendix 4 of the Governance Policy (notwithstanding the use of this statement will be discontinued under the Policy from 1 July 2020) –
- "I shall endeavour to fulfil my duties as a member of the School Council to which I am elected in accordance with its Christian ethos, ~~and its constituting ordinance,~~ and other applicable ordinances and policies of the Synod."
39. In making these recommendations, the Committee is aware that this would still allow (for example) a school principal to promote a personal belief about marriage that was opposed to the doctrine of the Diocese, provided this did not involve the use of school property. However the Committee believes that the most appropriate way of addressing this possibility is through a careful selection process of those to be appointed or elected to leadership positions in diocesan bodies and, in the case of executive positions, a careful framing of the terms upon which they are appointed.

Modifying the Property Use Policy

40. Other feedback received by the Committee noted that the Property Use Policy was framed negatively – for example in the phrase "not allowing Church property to be used for an activity that is inconsistent with the Policy." The unintended impact of this framing is that the policy could be read as requiring a disengagement and distancing from the community around us.
41. In response to this feedback, the committee recommends inserting a new paragraph 10(a) in the Property Use Policy. Paragraph 10 has several provisions which are headed by the statement "For the avoidance of doubt". The new paragraph 10(a) proposal is as follows.

10. For the avoidance of doubt –

- (a) This policy is not intended to require a withdrawal from, or the exclusion of, those who do not share our doctrines, tenets and beliefs. Rather, we should welcome to our properties those who do not share our doctrines, tenets and beliefs, to the fullest extent possible, yet in a way that does not cause our doctrines, tenets and beliefs to be contravened or compromised. The mere presence of those who do not share our beliefs or the mere expression of beliefs we do not share, will not contravene this policy. However allowing our property to be used for the promotion or propagation of such beliefs does. For example, it does not contravene our doctrines, tenets and beliefs for a resident of an Anglican retirement village who is an adherent of another faith to practise their faith in the privacy of their own residence, but it would be a contravention if the retirement village were to allow a service of public worship for those of that faith to be held.

42. The other provisions of the Property Use Policy are unchanged.

For and on behalf of the Standing Committee.

DANIEL GLYNN
Diocesan Secretary

29 August 2019