

Delegation of Powers Ordinance 1998

Explanatory Statement

Introduction

1. The bill for the Delegation of Powers Ordinance 1998 seeks-
 - (a) to delegate to the Standing Committee certain of the Synod's powers under the Constitutions set out in the Schedule to the Anglican Church of Australia Constitutions Act 1902 (the "1902 Constitutions");
 - (b) to re-enact the delegation to the Standing Committee of the Synod's powers under the Anglican Church of Australia Trust Property Act 1917 (the "1917 Act") and the Anglican Church of Australia (Bodies Corporate) Act 1938 (the "1938 Act"); and
 - (c) to make other consequential changes.

Revision of the 1902 Constitutions

2. Following the passing of a ratifying canon by the General Synod of the Anglican Church of Australia in February 1998 the 1902 Constitutions have been revised. The revised 1902 Constitutions are published on pages 527 to 530 inclusive of the 1996 Year Book and in the accompanying booklet.

3. Under Article 2(1) of the revised 1902 Constitutions the Synod may make ordinances upon and in respect of all matters and things concerning the order and good government of the Anglican Church of Australia and the regulation of its affairs within the Diocese, subject only to the Anglican Church of Australia Constitution Act 1961 and any other Act in force in New South Wales. This very broad power is equivalent to the power of the Synod under the 3rd of the former 1902 Constitutions.

4. Under Article 3(2) of the revised 1902 Constitutions the Synod may call upon any person holding property belonging to or held in trust for the church in the Diocese or any part thereof, or in which the church or any part thereof is in any manner interested, to render a full account of all such property, and of the manner in which the same and every part thereof is applied and disposed of. This power is equivalent to the power of the Synod under the 7th of the former 1902 Constitutions.

Delegation of Powers under the 1902 Constitutions

5. Under Article 7(1) of the revised 1902 Constitutions the Synod may delegate to the Standing Committee its powers to make ordinances under Article 2(1) and demands under Article 3(2). The power of delegation is a new power: the Synod did not have power to delegate to the Standing Committee its powers under the 3rd and 7th of the former 1902 Constitutions.

6. The bill proposes delegating to the Standing Committee the exercise of the Synod's powers under Articles 2(1) and 3(2) of the revised 1902 Constitutions. If the bill is passed much of the legislation which presently can only be dealt with by the Synod may be considered in future by the Standing Committee. The delegation will be subject to the following limitations imposed by other articles of the revised 1902 Constitutions -

- (a) the Standing Committee cannot make ordinances -
 - (i) dealing with cases of incapacity and inefficiency in the discharge of ministerial duty (Article 3(3));
 - (ii) determining when the licence of a member of the clergy may be suspended or revoked (Article 3(4));
 - (iii) determining the membership of Synod (Article (6)); and
- (b) the Standing Committee cannot make rules for the conduct of the Synod's business, the term of Synod or the mode of electing representative members (Article 4).

7. In addition, the bill provides that any ordinance proposed to be made by the Standing Committee partly or wholly under the powers delegated from the Synod, at any stage before assent, may be referred to the Synod by the Archbishop and must be referred upon the request in writing of any 5 members of the Standing Committee. This will enable the Archbishop or any 5 members of the Standing Committee to

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require that a bill be referred to the Synod for its consideration if they think this is appropriate. 5 members currently represents less than 10% of the total number of Standing Committee members.

Delegation of Powers under the 1917 Act and the 1938 Act

8. The Synod has already delegated to the Standing Committee many of its powers under the 1917 Act and the 1938 Act pursuant to authorities contained in those Acts: see clause 4 of the Delegation of Powers and Ordinance Procedure Ordinance 1973 (the "1973 Ordinance") (page 269 of *The Seventh Handbook*).

9. The bill proposes that all delegations by the Synod to the Standing Committee be contained in 1 new ordinance. Hence the bill proposes the repeal of those provisions of the 1973 Ordinance which provide for the delegation of powers under the 1917 Act and the enactment of new provisions which delegate the same powers.

10. In relation to the 1938 Act, the bill also proposes the repeal of those provisions in the 1973 Ordinance which provide for the delegation of powers and further proposes the enactment of new provisions. Presently, the powers delegated to the Standing Committee under the 1938 Act are extensive but, because the delegation is unusually expressed, there are uncertainties as to the precise scope of all the powers which have been delegated. It is proposed that all powers of the Synod under the 1938 Act be delegated to the Standing Committee.

11. The referral provision, by which the Archbishop or any 5 members of the Standing Committee may require that a bill be referred to the Synod (see item 7 above), will also apply to ordinances proposed to be made by the Standing Committee under the 1917 Act or the 1938 Act. Under the 1973 Ordinance the Archbishop or any 3 members of the Standing Committee may require that an ordinance to vary trusts be referred to the Synod. In so far as the proposed referral provision relates to any proposed ordinance (and not only an ordinance to vary trusts) it is wider than the equivalent provision in the 1973 Ordinance. The current referral provision has its origins in a 1926 ordinance made when the Standing Committee consisted of slightly more than 30 people. As the Standing Committee now has 58 members, it is considered appropriate to increase to 5 the number of members who may require that a bill be referred.

Consequential Provisions

12. The bill contains consequential provisions dealing with procedures, reporting and enquiry into proposed ordinances. These are based upon provisions in the 1973 Ordinance which are best re-enacted in a new Delegation of Powers Ordinance.

13. The bill also proposes amendments to the Standing Orders to specify the procedure if a bill is referred to the Synod by the Archbishop or any 5 members of the Standing Committee -

- (a) if the bill is referred before the Standing Committee has read the bill a first time - consideration of the bill by the Synod will commence with a motion for leave to introduce; and
- (b) if the bill is referred at any time after the Standing Committee has read the bill a first time - consideration of the bill by the Synod will commence at the second reading stage.

Recommendation

14. The Standing Committee recommends that the Synod pass the bill as an ordinance.

For and on behalf of the Standing Committee

MARK PAYNE
Diocesan Secretary

14 August 1998

Note - During the committee stage, the bill to which this Explanatory Statement relates was amended. New clauses 5(2) and 8(2) were inserted, at the suggestion of the Standing Committee to limit the powers of the Standing Committee to make ordinances under section 26 of the Anglican Church of Australia Trust Property Act 1917. (Former clause 5(2) was renumbered as clause 5(3) as a consequence). The Synod also determined that 3 members of the Standing Committee (rather than 5 members) be able to activate the "referral provision" referred to in paragraph.