

## External Relationships

(A report from the Standing Committee.)

### Introduction

1. See pages 373 and 639 of the 1994 Year Book for lead-up information to this matter.

### Constitution Review Commission

2. We reported last year that we had appointed a committee to make a submission to the General Synod's Constitution Review Commission. The submission made is in Appendix A.
3. We also reported last year that representatives of our Diocese and the General Synod had conferred about assessment matters and an undertaking had been given to review -
  - (a) the efficiency and operation of the General Synod Office; and
  - (b) the need for the large number of General Synod Commissioners and the efficiency of those Commissions.

### General Synod Office and Commissions

4. The General Synod Standing Committee appointed Mr David Nott, Partner of KPMG Peat Marwick, "to review the role, establishment and efficiency of the General Synod Office". The report (30 pages) had 19 recommendations and was referred to the Sydney Standing Committee for comment. Our comment is in Appendix B.
5. Representatives of the General Synod Standing Committee and the Sydney Standing Committee are to meet and further discuss the matter.

### General Synod Assessments

6. See items 6.9 and 7.2 of our report on the Diocesan Income and Expenditure Ordinance 1994 for our recommendations on the payment of General Synod assessments for 1995 and for grants to bodies outside the control of the Diocese.

For and on behalf of the Standing Committee

**W.G.S. GOTLEY**

*Diocesan Secretary*

9 August 1994

## Appendix A: Sydney Submission to the General Synod's Constitution Review Commission

(Prepared by Mr N.M. Cameron, Mr I.C. Miller, Bishop D.W.B. Robinson and Mr R. Tong.)

1. We have been asked to make a submission on behalf of the Sydney Diocese. The views that we express are not necessarily held by all Anglicans in the Diocese.
2. Last year, the Sydney Diocese suggested a number of changes to the 1961 Constitution to the Standing Committee of the General Synod. One of those changes was considered by the General Synod but modifications were made which made the change unacceptable in the Sydney Diocese. The other two changes were rejected. In this submission, we will not repeat what was suggested last year. Those changes deserve serious consideration - which consideration they have yet to receive.
3. It should not be assumed that the Sydney Synod will agree to all changes that are proposed. A number of proposals have been made to amend the Constitution since it came into force. Some of these have been adopted by Sydney; others have not. We expect that the Sydney Synod, in the future, will have an open mind to proposals that are put to it. However, on the basis of past experience, it is unlikely that the Sydney Synod will readily adopt proposals which it regards as detrimental to the Anglican denomination or to the legitimate interests of the Sydney Synod.
4. The 1961 Constitution is an appalling piece of drafting. Its deficiencies are notorious. An example is the problem of the meaning of "discipline" which appears in various parts of the Constitution and in relation to which possibly two or three different meanings are possible. Another example, at a different level, concerns the different meanings attributable to "house of bishops" in Sections 11 and 58(2) and to the practice of convening meetings, incorrectly said to be meetings of the house of bishops, otherwise than in the course of a session of the General Synod. In this memorandum, we will not refer to specific drafting problems.
5. Although Section 66 says that there is no power to alter Sections 1, 2 and 3, it is reasonable to conclude from the decisions of the Appellate Tribunal with regard to the re-marriage of divorced persons legislation, the decisions of the Appellate Tribunal with regard to the ordination of women and the attitude of the liturgical commission with regard to the filioque clause, that the protection and stability envisaged by Sections 1, 2, 3 and 66 has been removed by a degree of creative reinterpretation in a way not envisaged by those who supported the Constitution and these Sections in the first instance. The real question is the appropriate means for determining the part of the doctrine of the church referred to in Sections 1, 2 and 3. Previously, representatives of the Sydney Synod have suggested that a question as to whether or not a proposal is in conflict with Sections 1, 2 and 3 should be resolved by the Metropolitan Sees such that a proposal

should be regarded as contrary to those Sections if not assented to by all of the Metropolitan Sees. Since the Metropolitan Sees represent the great majority of Anglicans in Australia, such a proposal has the merit of ensuring that there is agreement on matters which are of fundamental importance - at least so far as change from the *status quo* is concerned. Such a proposal also has the merit of removing from the Appellate Tribunal the obligation of resolving that issue of dealing with the "political" side of that body. The Appellate Tribunal then becomes what it should be, namely, the most senior of the hierarchy of tribunals dealing with disciplinary matters. Two of our number, however, do not think that the question of consistency of legislation with the Constitution should be determined by the vote of the Metropolitan Sees on assent to or adoption of legislation and prefer the retention of Section 29.

6. The General Synod office has grown, since 1961, from 1 person (part-time) and a secretary (part-time) to over three persons with attendant administrators and secretaries. Most of this growth has occurred in the course of the last ten years. There is nothing in the Constitution which authorises this growth. Rather, the Constitution envisages a small registry with little responsibilities other than responsibilities relating to records. In our view, the concept in the Constitution should be adhered to - unless and until change is agreed to by all dioceses or, alternatively, by those dioceses which want and are willing financially to support the change. We point out, in passing, that the only rules presently relate to Section 32. There are rules with regard to elections etc but not "for controlling and regulating the administration of (the 'affairs') of the General Synod". The General Office undertakes functions for which it has no authority - such as organising the annual Bishops meeting. The same comment applies to the office of primate. Under the Constitution, the primate has a minor role. Again the Constitution should be adhered to unless and until change is agreed to be all dioceses.

7. Chapter 4 and the Table annexed to the Constitution give rise to particular problems in that there is no uniformity as regard who is "licensed" or as to what constitutes a "distinct official position". A consequence seems to be that a diocese which issues licences in wide circumstances (as compared with a diocese which does not) has a greater representation on the General Synod than the latter. The same applies with regard to "distinct official positions". Whatever happens internally in a diocese, as regards the Constitution, a uniform practice should be adopted across Australia and the practice should be reflected in a revised table.

8. The difficulty with Chapter 5 is that the chapter has different operation in different parts of Australia. An example is the position regarding the administration of oaths in Tasmania as compared with other States. On any view, this is anomalous. We submit that the adopting statutes in the several States should be amended so as to follow the New South Wales pattern.

9. Conceptually, the General Synod is regarded as being at the apex of a hierarchy of synods. In fact, it is at the nadir in that any legislation of any consequence will invariably affect the order and good government of a diocese and legislation which affects the order and good government of a diocese has effect in the diocese only in so far as the synod of the diocese chooses to adopt it. In other words, conceptually, the General Synod is a body which makes proposals to the dioceses as to what the dioceses might do. This function is at odds with high sounding statements as to powers such as that found in Section 26. Section 26 should be redrafted to reflect the actual role of the General Synod and avoid the implication that the General Synod can make canons for this Church which no diocese need adopt.

10. Whilst the provisional canon procedure has considerable merit, it appears to break down when the provisional canon is referred back to the General Synod. The procedures do not contain any opportunity for the individual recommendations from the dioceses to be debated. This may not necessitate an amendment to the Constitution but an amendment to the standing orders should be considered. The amendment could require that recommendations from an individual diocese must be debated and accepted or rejected. Where an amendment is accepted, the debate should adjourn to enable any necessary drafting to be done and, after the drafting has been done (but not necessarily incorporated), the debate could resume at the second reading stage.

11. Section 26 does not accurately reflect the true powers of the General Synod. Section 70 is also misleading in that it is both qualified by the Constitution and the relevant adopting legislation of the several States and Territories. The Sections should be amended to reflect their true operation. It is unlikely that the Sydney Synod will support any proposal that involves an increase in the powers of the General Synod.

12. Section 32 has been misused and its terms disregarded. It is clear that there are at least two concepts of what the General Synod establishment should be. Both should be accommodated. This would require, to reflect the view that the General Synod establishment should be kept to a minimum, the deletion of paragraphs (2)(a) and (b1), all words following "Standing Committee" from paragraph (2)(c) and paragraph (2)(e). A second Section should be included to allow for the General Synod to raise moneys for the purposes of the General Synod establishment, the intention being that those who wish a substantial establishment can contribute to the cost of the additional establishment. In particular, without limiting this proposal, it should be pointed out that a "user pays" principle should be adopted relative to the commissions, that is, those who want the commissions and find their reports useful can pay for the commission and pay for their reports. At present those dioceses which do not support the commissions are obliged to support the commissions financially.

13. The advisory jurisdiction of the Appellate Tribunal has not served the denomination well. The last reference is a good example. Section 63 should be deleted. A previous attempt to delete Section 63 was defeated but had private support from a number of members of the Appellate Tribunal. If the suggestion made in 5 is not adopted, Section 29 will provide a sufficient means of satisfactorily resolving conflict between legislation and the Constitution. If the suggestion referred to earlier is adopted, such issues can be left to the Synod for the Metropolitan Dioceses.

14. The Sydney Synod is not likely to favour changes in the procedures to amend the Constitution although it is conceivable that the Synod may support the deletion of Section 76 and addition of Sections 1, 2, 3 and 66 to the Sections listed at the end of Section 67(c) and the deletion of Section 67(b) and the addition of the sections at the end of that section to Section 67(d). There would be consequential alterations.

1 December 1993

## Appendix B: Sydney Response to the Report to the Standing Committee of the General Synod on the General Synod Office

(Prepared by Mr N.M. Cameron, Dean B.A. Jobbins and Dr L.A. Scandrett.)

### Introduction

Notwithstanding its considerable merits, the report is seriously flawed.

In the first place, the report understandably fails to acknowledge the widespread disagreement within the Anglican Church over the nature of the national church. The tension is between strong centralism and localism. Until that tension is resolved, and it is occupying the attention of the Constitution Review Commission, it is not possible to describe the role of the General Synod Office in detail.

Secondly, at the outset the writer of the Report notes two "contradictory views" which may be summarised as follows -

- (a) *"The first is that the powers of the General Synod are ..... broad in their definition ....."*
- (b) *"The second view is that the practical application of those powers (ie the powers of the General Synod) is so circumscribed by the need for individual diocesan approval that there is no point moving down a particular path unless there is prior unanimous approval from all dioceses."*

The writer supports the first view and bases his assessment on the "very broad 'powers' set down in clause 26 of the Constitution". Unfortunately, the writer has been considering the wrong thing. The Constitution takes its force from various Acts of Parliament. The Act of Parliament applicable in New South Wales, namely, The Anglican Church of Australia Constitution Act 1961 gives the Constitution a very narrow application. Section 2 of the 1961 Act provides -

*"The several articles and provision of the Constitution contained in the schedule to this Act (hereinafter called the Constitution) and any canons and rules to be made under or by virtue or in pursuance thereof are and as provided in the constitution shall be for all purposes connected with or in any way relating to the property of the (Anglican Church of Australia) binding on the Bishops, clergy and laity being members of The Anglican Church of Australia .... within the State of New South Wales."*

That the Constitution does not have wider application was pointed out in unequivocal terms by Mr Justice Priestley in *Scandrett v Dowling* in the following terms -

*"This language seems to me to make it plain that the Act does not give any binding force of general law to any parts of the Constitution not capable of being used for a purpose connected with or in any way relating to the property of the Church. I do not see anything in the following ten sections of the Act which gives any further binding effect to the contents of the Constitution than as given by s2. Similarly, I do not think that anything in the preamble to the Act can widen the operation of s2 that I have described .... It is only in respect of property so held that the Articles and Provisions of the Constitution and the canons and rules made under it are so binding, as a matter of general law, on the bishops, clergy and laity who are members of the church. Section 2 seems to me to be quite clear in this respect."*

Hope J concurred.

Section 2 of the 1961 Act needs to be read with Section 30 of the Constitution which provides, in effect, that a canon which affects the church trust property of a diocese does not come into force in the diocese unless and until the dioceses by ordinance adopts the canon.

Thus, it is clear that the two "contradictory views" expressed by the writer of the report are both wrong. The powers of the General Synod are very narrow, being limited to church trust property and even then have no application unless the exercise of the power is ratified by the synod of the dioceses affected by the purported exercise of a power. On the other hand, there is nothing, in this very narrow area which requires "prior unanimous approval from all the dioceses".

Unfortunately, having made this mistake at the beginning and having proceeded on the basis of an incorrect assumption, many of the recommendations are misconceived.

In our view, the report should be re-written and the recommendations should be reconsidered on the basis of the very limited powers enjoyed by the General Synod.

In the following paragraphs we consider each of the recommendations.

### Recommendation 1

*That the cost of staff time spent on activities not provided for in the Constitution be allocated in the financial records of the GSO and that this record be available for the inspection of the dioceses.*

Agreed, but the limited activities provided for in the Constitution should be noted. These are the primatial functions in the Constitution, the functions of the General Synod, the functions of the Standing Committee of the General Synod, the

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functions of the Appellate and Special Tribunals and the functions of the Trust Corporation. All other matters should be regarded as being outside the Constitution. Such other matters should be divided into two categories - responsibilities that arise from canons and other responsibilities. Responsibilities which arise from canons should be separately charged to the bodies for whom the services are provided. Members of the General Synod staff should not become members of or involved in other bodies except as an activity in their spare time outside of working hours.

### Recommendation 3

*That there should be closer cooperation between the diocesan commissions at the planning phase of research projects so the differences can be debated in committee and only fundamental differences separate the final products.*

Agreed. For example, one wonders why it is necessary for each diocese separately to look at the problem of sexual misconduct.

### Recommendation 4

*That the present method of appointing persons to Commissions be reviewed.*

This raises the question as to the purpose of the Commissions. There is some evidence that the Commissions were established in the first place so as to provide advice to the Primate. If this is so, one wonders -

- (a) why the Commissions need to be established by canon;
- (b) whether this function is being effectively performed; and
- (c) whether the Commissions need to be so large.

### Recommendation 5

*That if the organisation wants to obtain value for money from the Commissioners, then the head of the GSO needs to take a more active role in setting their agenda, in moving their agenda along, and in promoting the outcome.*

Not agreed. The recommendation begs the question - what is the function and need for the Commissions?

### Recommendation 6

*Examine the number of dioceses needed.*

Agreed.

### Recommendation 7

*Examine the cost savings of moving non-theological functions to a central location.*

No comment. Initiative in this area should come from the dioceses.

### Recommendation 8

*Examine the feasibility of combining all of the superannuation plans.*

This recommendation is based on a false assumption. The Long Service Leave Fund does not work well. It has given rise to a number of anomalies. There is a case, for example, for the Sydney diocese withdrawing from that fund.

### Recommendation 9

*Perform a structural audit of all the dioceses and all the Anglican organisations in Australia.*

Not agreed. This should be a matter for individual dioceses since the organisations are mostly diocesan.

### Recommendation 10

*Establish expertise in the church to perform a financial overview of the organisations reporting to General Synod: the Audit Committee.*

Even if this proposal is within the constitutional powers of the General Synod, the General Synod has no role to play in the affairs of dioceses or of organisations not under its control.

### Recommendation 11

*There should be a clear statement in the constitution, rules or canons of what responsibility the General Synod has for the autonomous Anglican voluntary organisations.*

Not agreed.

This recommendation shows a clear failure to understand the nature of The Anglican Church of Australia and the limited application of the Constitution.

### Recommendation 12

*Any organisation using the word "Anglican" in its title or claiming to be part of the communion should be subject to the control of a governing body of the union (that is either the General Synod or the Synod of a diocese).*

Legislation will be required in each State and Territory of Australia for this recommendation to be implemented. We do not think this is practical.

Further, the recommendation ignores the fact that there is more than one Anglican church in Australia.

**Recommendation 13**

*That the financial results of all of the organisations controlled by General Synod should be consolidated to form the annual accounts of the General Synod.*

Agreed.

**Recommendation 14**

*That the Standing Committee should re-evaluate the role and job description of the General Secretary having regard to -*

- *the following recommendation regarding the changed role of the Finance Officer;*
- *the following recommendation regarding the changed role of the Research Officer;*
- *whether you see a need to co-ordinate, initiate, execute and promote the work of the Commissions;*
- *the need to reduce the number of committees by giving someone executive authority to do the task;*
- *the need to reduce the burden on volunteers on committees by considering and resolving (or at least recommending researched answers to) issues that come before them;*
- *the need to develop a staff appraisal system;*
- *the ongoing need for staff professional development;*
- *the appropriate title for the job.*

We agree that the role and job description of the General Secretary should be re-evaluated. Surely this must have been done immediately before the recent appointment; however, we were unaware of the outcome of that review and considered it unhelpful to speculate on that outcome.

**Recommendations 15 to 19**

15. *That the position of Finance Officer be made a full time position, upgraded to the job description of Finance Director and the dependency on the Sydney Diocese for accounting assistance removed and (if necessary, given changes to the General Secretary position) that the incumbent have strong secretarial skills to assist the General Secretary.*
16. *That an Audit Committee be established to oversee the finances of the General Synod and its related organisations.*
17. *That consideration be given to the feasibility of contracting out the research needs of the commissions.*
18. *That a procedure manual be written for the GSO.*
19. *That a business plan be drawn up for the GSO; that the Primate consider having his Melbourne Office linked to the Sydney GSO by a "Quickmail" system which would allow his correspondence etc to be prepared there but printed in Melbourne for signature; that the frequency of meeting of the Executive and the commissions be re-considered.*

All of these recommendations assume, in effect, that the *status quo* must be preserved but improved by being made more efficient.

We question the *status quo*.

For example, why is a Research Officer needed? What has a Research Officer to do with the property of The Anglican Church of Australia?

**Concluding Remark**

As indicated at the end of the introduction, the report is fundamentally flawed and the writer should be asked to re-write the report based on a proper understanding of the Constitution.

26 July 1994