Review of the Archbishop of Sydney Appointment Ordinance 1982

(A report on behalf of the Standing Committee.)

Introduction

1. At its meeting on 28 May 2007, the Standing Committee appointed a committee comprising Dr Laurie Scandrett, Mr Robert Tong, Dr Karin Sowada, Canon Bruce Ballantine-Jones, Mr Peter Kell, Dr Philip Selden and Mr Robert Wicks to review the Archbishop of Sydney Appointment Ordinance 1982 (the "Archbishop Appointment Ordinance") and to report to the Standing Committee about its review in due course.

2. At its meeting on 31 August 2009, the Standing Committee also requested the committee to consider whether it should recommend to Synod in 2009 that the term of office of a future Archbishop should be limited to 10 years with a possible 3 year extension.

3. The committee elected Mr Peter Kell as chairman. During the course of its review, Dr Sowada resigned her position on the committee.

4. The committee met on 3 occasions.

5. This report sets out the changes which the committee recommends should be made to the Archbishop Appointment Ordinance and related ordinances.

Preliminary matters

Selection of those to participate in debate

6. The committee noted that the rules under the Conduct of the Business of Synod Ordinance 2000 apply to meetings of the Synod convened under the Archbishop Appointment Ordinance to the extent that they are not inconsistent with the Archbishop Appointment Ordinance. The committee considers that the rules of debate that apply to an ordinary meeting of the Synod should apply to an election Synod.

7. To ensure transparency in relation to the selection of persons to participate in debate, the committee recommends that the Conduct of the Business of Synod Ordinance 2000 be amended to make it clear that –

(a) persons who wish to speak during a debate should stand in their place, and

(b) the President be required to select from among those who are standing those who are able to participate in the debate.

Who should give the Presidential Address?

8. The committee recommends that the Archbishop Appointment Ordinance be modified to make it clear that if a person who would otherwise be the President is a candidate, that person is not entitled to give the Presidential Address and instead the person "next in line" is to give the Presidential Address.

Nominations

Use of information on the National Register

9. A candidate is currently given a period of 14 days after receiving notice of his nomination within which he can withdraw his nomination.

10. The committee recommends that a provision be included in the Archbishop Appointment Ordinance which requires the Director of Professional Standards to access the National Register to determine whether there is any information about the candidate on the Register. Any information about a candidate should be forwarded forthwith to the candidate on the understanding that unless the candidate withdraws his nomination, such information will be disclosed to the Synod during the election process.

11. The committee noted a potential timing problem in obtaining information about a candidate from the Register and providing such information to a candidate to enable him to have the option of withdrawing their nomination within the 14 day period. In order to address this problem, the committee recommends that –

(a) The earliest time at which an Election Synod can be held be extended to 9 weeks after the vacancy occurs (currently 8 weeks).

(b) As a consequence, the closing date for nominations should be 42 days (currently 35 days) before the first day of the Election Synod.

(c) A candidate be able to withdraw his nomination at any time up to 21 days before the first day of the Election Synod (instead of within 14 days of the candidate being notified of his nomination).

12. The committee also recommends that it would be appropriate to authorise the Director of Professional Standards to undertake searches on the National Register as soon as the first nomination is received for a person (whether or not he ultimately obtains the requisite 20 nominations). This should be reflected in amendments to the General Synod – National Register Canon 2007 Adopting Ordinance 2008 which provides for the circumstances in which access to and disclosure from the National Register can be undertaken.

Reporting on remuneration and emoluments of the Archbishop

13. The committee noted that the Standing Committee has recommended to the Synod that it exclude the See Finance and Information Canon 1966. The committee therefore recommends that provisions for appropriate reporting concerning the remuneration and emoluments of the Archbishop upon the See becoming vacant should be included in the Archbishop Appointment Ordinance. Such provisions should require the preparation of a suitable report upon a vacancy in the office of Archbishop arising and the report being made available to candidates before the election process commences.

Select list

Where no candidate on the select list

14. The committee recommends that if there is no candidate who obtains a majority in either the House of Clergy or the House of Laity and therefore there is no candidate to be included on the select list, it would be appropriate to provide that the Synod be adjourned and the nomination process start again.

Where only one or two candidates on the select list

15. The committee noted that if there are only one or two candidates on the select list, then such candidates are to be included on the final list if they receive a majority vote in both houses. The committee considers that this process is not entirely clear and recommends that the Archbishop Appointment Ordinance be amended to clarify this aspect of the process.

Final list

Where no candidates on the final list

16. If there are no candidates included on the final list, the committee recommends that it would be appropriate to provide that the Synod be adjourned and the nomination process start again.

Where only one candidate on the final list

17. If there is only one candidate on the final List the committee considers that it would be appropriate to put the matter to the vote. However if having put the matter to the vote, the candidate fails to obtain a majority in both houses then the committee recommends that a process along the lines of that followed under clause 33(1) should apply with the following modifications –

(a) the decision as to what should happen should be taken by the Synod forthwith, and

(b) the Synod's decision should be limited to either holding a further ballot (paragraph (a)) or adjourning Synod and starting the nomination process again (paragraph (d)).

18. There should be no option for the Synod to undertake back balloting in such circumstances.

Starting nomination process again

19. The committee noted that there is already a process in clause 33(1)(d) for restarting the nomination process. However in this instance and also in the instances referred to in paragraphs 14 and 16, the committee recommends a standardised process for starting the nomination process again which would be as follows –

(a) The Synod is adjourned, and

(b) Standing Committee is to declare within a period of 5 weeks of adjournment the date on which the vacancy is deemed to have occurred for the purposes of starting the nomination process again.

(c) The person who is entitled to exercise the powers of the Archbishop is to issue a notice reconvening Synod within 21 days of the deemed date of vacancy as if the notice were a notice to summon Synod under clause 5.

20. The committee noted that as a practical matter enquiries would be made immediately following the adjournment as to the availability of the Synod venue for the purposes of reconvening the Synod at a suitable time to consider further nominations. This information would be made available to the Standing Committee for the purposes of making a decision as to when to declare a deemed vacancy for the purposes of starting the nomination process again.

Retirement age and tenure

Election Synod conflicting with ordinary session of Synod or General Synod

21. The committee noted the possibility of an Election Synod falling at a time which conflicts with other significant events in our calendar, in particular an ordinary session of the Synod or a General Synod session.

22. In order to build in some flexibility to avoid such conflicts, the committee recommends that the Retirements Ordinance 1993 be amended to enable the Synod or the Standing Committee by resolution to extend the retirement age of the Archbishop by up to 6 months if it considers it is necessary to do so to facilitate the orderly election of an Archbishop.

Proposal to limit tenure of the Archbishop

23. The committee considered whether the tenure of the Archbishop should be limited to 10 years with a possible 3 year extension.

24. The committee recommended that before further detailed work on the specific question of limiting the Archbishop's tenure is undertaken, the Standing Committee should debate this question in-principle. The committee did not consider that it was appropriate to bring recommendations concerning this question to the Synod in 2009.

25. However, in order to ensure that a person who is elected as Archbishop does not have his retirement age prematurely extended beyond the age of 65 years, the committee recommended that clause 5(1)(a) of the Retirements Ordinance 1993 be amended to provide that no such extension of the Archbishop's retirement age may be made until the incumbent reaches the age of 60 years.

Standing Committee's response to recommendations

26. The Standing Committee –

(a) agreed in principle to the proposed changes referred to in this report, and

(b) agreed to undertake an in-principle debate before July 2010 on the question of whether the Archbishop's tenure should be limited, and

(c) requested that the bill for the Archbishop of Sydney Appointment Amendment Ordinance 2009 be promoted to the Synod "by request of the Standing Committee".

For and on behalf of the Standing Committee

PETER KELL
Chair of the committee

29 September 2009