

Review of the Recognised Churches Ordinance 2000

(A report from the Standing Committee)

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Background

1. At its meeting on 10 February 2003, the Standing Committee requested that a committee of 4 persons undertake a review of the Recognised Churches Ordinance 2000 including identifying any peculiarities in the process of transferring a congregation of an existing parish into a recognised church. The Standing Committee subsequently appointed Bishop Robert Forsyth, the Rev Peter Hayward and Mr Michael Orpwood QC as members of the committee. Mr Robert Wicks acted as secretary.
2. The committee met on 6 occasions. Bishop Forsyth was appointed as chairman.

General approach

3. In considering this matter, the committee was mindful of the circumstances that precipitated this review, namely whether both churches which have been recognised to date, Cherrybrook Anglican Church and UniChurch (UNSW), strictly met the current requirements for recognition. Although the committee did not consider it necessary to comment on this matter, the committee did consider that, as a matter of policy, recognition of these churches as separate Anglican ministries with a status equivalent to a parish was desirable.
4. In terms of policy, the committee noted that its review of the Recognised Churches Ordinance is being undertaken in a very different environment to the one in which the Ordinance was initially passed. In particular the committee noted the Fundamental Aim of the Diocesan Mission adopted by the Synod in 2002 –
“To multiply Bible-based Christian fellowships, congregations and churches which equip and nurture their members and expand themselves, both in the Diocese and ‘in all the world’.”

5. The committee also noted the second and fourth of the Mission policies adopted by the Synod in conjunction with the Fundamental Aim, namely –

- “2. To enable parish churches to expand numerically, equip and nurture their members, and become the mother-churches of as many fellowships and congregations as possible; and also to take further initiatives to create fellowships by penetrating structures of society beyond the reach of the parish church with the gospel.
4. To reform the life of the Diocese (including our culture, ordinances, customs, use of resources, and deployment of ministry) to encourage and enable the fulfilment of the fundamental aim.”

6. The committee sought to assess the operation of the Recognised Churches Ordinance against the Fundamental Aim and these policy statements. In doing so, the committee noted that while the Ordinance did have some role in facilitating the multiplication of Bible-based churches, the Ordinance mainly provides a mechanism for recognising *existing* church groups which ought to be recognised as having a status equivalent to a parish. The focus of the committee’s review, therefore, was directed at ensuring that the processes and criteria for recognition under the Ordinance result in the recognition of church groups which are sufficiently mature to “equip and nurture their members and expand themselves” so as to warrant such status.

7. On this basis, the committee believed that a number of principles upon which the Ordinance was initially based need to be rethought.

8. The report of the Committee raised for discussion some questions of principle and proposed some ways forward. These matters are referred to in paragraphs 9 to 51 following.

Existing requirements for recognition

9. Under clause 4(1) of the Ordinance, a proposal to recognise a church may be made by either 20 adult members of the church or the relevant regional council. In broad terms, there is 1 restriction on a church group becoming recognised and 4 criteria that need to be fulfilled.

10. The restriction is contained in the meaning of “church” in clause 2(1) of the Ordinance. “Church” means a group of persons who regularly meet together within the Diocese for worship as Christian people *but excludes* any group which is –

- (a) recognised by any ordinance of the Synod as a distinct body, or
- (b) part of the Anglican Church in a parish.

11. The 4 criteria for recognition are set out in clause 7 of the Ordinance. They are –

Firstly, the Archbishop must be willing to appoint the person who is named in a proposal for recognition as the minister of the church to be recognised. A person is eligible to be appointed as the minister of a recognised church if that person is –

- (a) a priest, or
- (b) someone whom the Archbishop is prepared to ordain as a priest for the purposes of being appointed as the minister of the church (having regard to his level of theological training and pastoral experience and the needs of the church).

In addition, the person must be “otherwise acceptable to the Archbishop” in order to be an eligible person.

Secondly, the church, if recognised, must be able from its own resources –

- (a) to pay the person proposed to be its minister the minimum stipend and other allowances recommended at that time by the Synod or the Standing Committee, and
- (b) to provide the person proposed to be its minister with housing arrangements acceptable to that person which have been certified as suitable to the Archbishop by the relevant Archdeacon, and
- (c) to pay all amounts payable for assessments and other charges under the Assessments and Charges Ordinance 1975.

Thirdly, the church must have not less than 80 members as at the date of the proposal for recognition of which at least two-thirds of that number must attend each regular meeting of the church during the 3 month period to the date of the proposal.

Fourthly, the church must have a distinctive character. “Distinctive character” is defined to mean an identifiably distinctive character based on indigenous, socio-economic or ethnic background, occupation, age, or other bona fide ground other than a theological ground.

12. Under clause 5, upon receiving a copy of a proposal for recognition, the regional council is to investigate the proposal and determine whether it meets the 4 criteria. By implication, the regional council must also consider whether the group of persons to which the proposal relates is a church in the requisite sense. Under clause 2(3), any question as to whether a group of persons is or is not a church in the requisite sense can be resolved by the Standing Committee by resolution.

13. Under clause 12(1), any person may appeal to the Standing Committee regarding a decision of a regional council to recognise a church or not. Under clause 12(5), a church which does not meet the

criteria for recognition may appeal to the Archbishop if it wishes to be considered as an exceptional case.

Questions of principle

Is a Recognised Churches Ordinance necessary?

14. The committee worked on the basis that there should be a means by which an existing church group which does not own real property (being church trust property) can be recognised as a separate Anglican ministry with a status equivalent to a parish. The committee worked on this basis in view of Synod resolution 33/98 which called for legislation to enable the establishment of congregations as parishes without requiring them to own property. Nevertheless there is a question as to whether an ordinance such as the Recognised Churches Ordinance is necessary to recognise such ministries.

15. The question is primarily raised by the existing power of the Archbishop to create provisional parishes under clause 7 of the Parishes Ordinance 1979 and the absence of any express requirement that a provisional parish created in this way must own property. The question is also raised in the context of proposals made to the Synod to form a new parish or provisional parish under clause 4(1)(a) of the Parishes Ordinance. Again, there is no express requirement that a parochial unit created in this way must own property, although property ownership is contemplated within the proposal mechanism (eg clauses 4(3)(c), 5(4)).

16. Despite the absence of an express requirement to own property, in practice there is a difficulty in creating a parochial unit as a means of recognising a ministry where the ministry does not own property or, at least, does not have access to church trust property available for its use.

17. An example of this difficulty was seen in the recent creation of the provisional parish of Rouse Hill. Under ordinances such as the Church Administration Ordinance 1990 and the Church Grounds and Buildings Ordinance 1990 the basic unit used to administer parochial units is the "church". A "church" is, in essence, a building situated on church trust property licensed for the celebration of divine service. In order to trigger the operation of these ordinances, the meeting place for the "ministry nucleus" of the proposed provisional parish of Rouse Hill had to be licensed as a church. Fortunately, in that case, the meeting place was a building situated on church trust property held by the Sydney Anglican Schools Corporation as part of the Rouse Hill Anglican College. Had this group been unable to meet in a building situated on church trust property, it is doubtful whether the provisional parish would have been created. In effect the ministry undertaken from Rouse Hill Anglican College could not have formed the basis of a provisional parish without church trust property.

18. In many respects this difficulty could have been overcome by amending the ordinances which establish our existing structures for administering ministry rather than by creating a separate class of ministry unit under a Recognised Churches Ordinance. However this would have required a comprehensive review of our existing structures which the committee believed was not feasible at the time legislation to implement Synod resolution 33/98 was prepared. The committee believed that such a review is now not only feasible but highly desirable.

19. There is however another reason why it is desirable, at least for the time being, to keep ministry units which do not need to own property (ie recognised churches) distinct from ministry units which are property-based (ie parochial units). This reason relates to the different circumstances surrounding the “birth” of each type of unit.

20. The establishment of ministries through the creation of a parochial unit is appropriate where the medium to long term ministry needs of an area are clear, for example there is a new residential release area. By creating a parish or, more usually, a provisional parish, there is a structure in place that can receive ministry resources to meet these needs. The establishment of a ministry unit in this way generally relies on a property-based infrastructure aimed at establishing a relatively permanent ministry in an area even where the initial ministry is not fully mature or self-sustaining. This might be regarded as a “top down” establishment of ministry units.

21. In contrast, a recognised church is established where there is a mature and self-sustaining group of Christian people meeting together under pastoral leadership which either wishes to be brought under the Anglican banner or, in the case of groups such as Cherrybrook, wishes to achieve a separate ministry status. This might be regarded as a “bottom up” establishment of ministry units. In most cases such groups will not own property.

22. The committee considered that both models of establishing ministry units should be encouraged. The first has a focus on establishing or multiplying Bible-based churches. The second has a focus on recognising existing ministries that are sufficiently mature to warrant the same status as a parish without the need for them to own property.

Should there be parishes with many congregations or many congregations with parish status?

23. The answer to this question will have a significant impact on how the requirements for recognition are framed. If the requirements for recognition are set too low, effective parish status will be granted to groups whose ministries do not warrant such status. On the other hand setting the requirements for recognition too high will render the Ordinance a dead letter. More fundamentally, if congregations with

parish status (ie recognised churches) were to become a normative or prevalent way in which ministry is undertaken in the Diocese, the requirements for recognition would assume greater importance in regulating the relationship between and coordinating the ministry of parochial units and recognised churches.

24. In framing its comments regarding the requirements for recognition, the committee sought to maintain the status quo with some exceptions, most notably in respect of –

- (a) the criterion of distinctiveness, and
- (b) the restriction on parish groups becoming recognised churches, and
- (c) the need for a substantial number of the members of a church to support a proposal for the church's recognition.

Is it necessary or appropriate to retain “distinctiveness” as a criterion for recognition?

25. The requirement for a church to have a “distinctive character” before being eligible for recognition was included in order to make a clear distinction between ministry undertaken through the existing parish structure (perceived as geographical and heterogenous) and the ministry to be undertaken by a recognised church (which was to be non-geographical but with a particular focus group). This was a crucial part of the Ordinance as initially drafted.

26. The committee believed that there to be an argument to remove distinctiveness as a criterion for recognition. The committee took this view primarily because it believed there may well be some situations where freedom to conduct a parish-style ministry without owning property would be advantageous to the Mission. The committee also considered there to be a significant conceptual difficulty in applying the criterion of distinctiveness in a meaningful and objective way.

27. If distinctiveness were to be removed as a criterion for recognition, the committee also raised the possibility of giving the Archbishop the discretion of assigning an ecclesiastical district to a recognised church. The committee understood that the current thinking of the Mission Taskforce is that focused geographical areas of ministry are helpful when coordinating mission across the Diocese. In particular, it is envisaged that each rector of a parish would be a kind of mission director responsible for mission within the parish area. This thinking might be undermined if it were not possible to assign an ecclesiastical district to certain recognised churches. The committee envisaged that a discretion to assign an ecclesiastical district to a recognised church would be exercised in accordance with appropriate consultative procedures as a means of avoiding geographical overlap in the mission coverage of the Diocese. It would therefore usually apply to recognised churches with a clear geographical ministry.

28. The original ordinance did not permit theological distinctiveness to function as a criterion for recognition. The removal of any criteria of distinctiveness does not change this.

Is it necessary or appropriate to retain the restriction on a group of persons who are “part of the Anglican Church in a parish” from becoming a recognised church?

29. While this restriction may have had a good intention in preventing parts of existing parishes simply breaking away and forming separate parochial units, the committee considered that rather than seeking to impose a blanket ban on a group forming part of a parish becoming a recognised church, it would be more desirable to allow and regulate such a process. The committee was aware that recognition of both churches to date, namely Cherrybrook Anglican Church and UniChurch (UNSW), have challenged this restriction and suggest that it should be removed.

30. Where a group forming part of a parish wishes to become recognised as a separate ministry, clearly the goodwill, support and encouragement of the minister and parish council would be desirable wherever possible. Further, it would generally be undesirable for a parish from which a group has departed to itself be left with an untenable ministry as a result of that departure.

31. For these reasons the committee considered that the consent of the minister and parish council should ordinarily be required for a parish group to become a separately recognised ministry. In those circumstances where a proposal for recognition of such a group does not include the consent of the minister and parish council, the regional council would be required to approve the proposed separation of the group from the parish. Any decision made by the regional council in this regard would be subject to an appeal to the Standing Committee.

Are the processes for appointing a person who is not a priest as minister of a recognised church adequate?

32. The committee considered it to be undesirable to recognise a church unless it had proper leadership. The committee also considered that the leadership of a recognised church should be at the same level as the leadership of a parish church and, as such, a person leading a recognised church should be a priest.

33. There are however certain problems of timing under the current Ordinance in appointing a person as the minister of a recognised church if that person is not already a priest.

34. The first problem arises once a regional council has determined that a church satisfies the criteria in clause 7 thereby enabling the Regional Bishop to make a declaration under clause 8(1) that the church is a recognised church subject to the Archbishop offering and the proposed minister accepting appointment as the minister and

ordination as a priest. However a person who is not already a priest prior to the declaration of the Regional Bishop would not generally be able to be ordained as a priest shortly after the declaration. There is currently a process to be followed while such a person is assessed for ordination as a deacon and, in due course, as a priest. In theory, therefore, there could be a substantial period of time between a Regional Bishop making a declaration under clause 8(1) and the church actually becoming a recognised church.

35. The converse approach in ordaining a person as deacon and then priest in advance of an application for recognition also presents a problem where the proposal for recognition relates to a church which is not part of the Anglican Church. That is, it is not the current practice of the Archbishop to ordain a person as deacon unless there is a position within the Anglican Church to which that person is to be appointed. The holding of a ministry position within a church outside the Anglican Church would not currently render the person holding that position eligible for ordination as a deacon.

36. The committee identified a number of possibilities to overcome these problems.

37. First, it would be possible to ordain the leader of the church as both deacon and priest on the same day.

38. Secondly, it would be possible to appoint a minister who is already a priest to be an acting minister for the purposes of recognition. Upon the church being recognised the “actual leader” of the church would, if not already a deacon, be ordained as a deacon and appointed as an assistant minister to the church. This would be on the understanding that the assistant minister would, on his subsequent ordination as a priest, be appointed as the minister of the church.

39. Thirdly, it might be appropriate to strengthen what is, in effect, already a form of contingent recognition of a church under the Ordinance (see paragraph 34 above). A strengthened form of contingent recognition might be made subject to the leader of the church being ordained as a deacon and all criteria, other than having a person whom the Archbishop is then prepared to appoint as the minister, being met. The church would remain independent of the Diocese with full recognition coming into effect only upon the leader being ordained as a priest. This option would require a departure from the practice of not ordaining a person as deacon unless there is an Anglican ministry position available for that person.

40. The committee’s primary aim in raising these options was to create flexibility in ensuring that a church group has access to appropriate leadership upon it being recognised.

Is it necessary or appropriate for regional councils to initiate proposals for recognition?

41. The committee took the view that although church planting may be initiated by regional councils, it was neither necessary nor appropriate for regional councils to retain the right to initiate a formal proposal for the recognition of a church. This is consistent with the view expressed in paragraph 21 above that the recognition of a church should be driven from the “bottom up”.

42. In practice a regional council would not often have cause to formally initiate proposals for recognition. In those instances where it might wish to do so, the committee nonetheless considered that the role of proposing recognition should be kept separate from the role undertaken by the regional council of assessing whether the criteria for recognition have been met.

43. In any event, any proposal for recognition by a regional council would be inappropriate unless it was supported by a substantial number of the members of the church. Where there was such support, interposing the regional council in the proposal process would be unnecessary.

Is it desirable to include as a requirement for recognition that a substantial number of members of a church support the recognition?

44. The committee raised the possibility of a situation where, say 20 members of a church make a proposal for recognition of the church but without the support of or even opposition by a substantial number of the other members of the church. The committee thought that a proposal for recognition made in such circumstances would be inappropriate.

45. The committee therefore considered that, as an additional criterion for recognition, any proposal for recognition should include satisfactory evidence that a substantial number of the members of the church support the proposal.

Is the definition of church otherwise appropriate?

46. The committee considered that the definition of church in the Ordinance should be amended to include the concept of “public worship”. This avoids the possibility of private meetings being recognised. This also reflects a little more closely the language used in the definition of “Member of this Church” in the 1961 Constitution.

Are the financial criteria for recognition appropriate?

47. The committee considered that in general the financial criteria for recognition continue to be appropriate. The committee noted that there may be some practical difficulty in assessing the financial viability of a church group where the group is part of a broader ministry such as a parish. However any such difficulty is an administrative matter that need not be addressed in the ordinance.

Are the membership criteria for recognition appropriate?

48. The committee considered that the appropriate number of members of a church group for the purposes of recognition will always be a matter of conjecture. The committee was satisfied with the current membership criteria and as such does not consider it necessary to make any recommendation for change in this area.

Are the appeal provisions in clause 12 of the ordinance appropriate?

49. The committee considered that the mechanism by which an appeal can be made to the Archbishop if the criteria for recognition cannot be met should be discontinued. In Anglican polity, the Archbishop's discretion generally relates to personnel matters (ie appointing ministers) rather than structural matters. The removal of this appeal mechanism would also avoid the Archbishop being subject to "special pleading" requests. If there is a group which merits recognition but which is not able to meet the criteria generally applicable, it would be appropriate to pass a special purpose ordinance to achieve the desired result.

Recommendations of the Committee

50. The committee recommended that legislation amending the Recognised Churches Ordinance 2000 be prepared with a view to its promotion to the 2004 session of Synod in accordance with the following principles –

- (a) Distinctiveness should be removed as a criterion for recognition of a church under the Ordinance.
- (b) In conjunction with the removal of distinctiveness as a criterion for recognition, the Archbishop should be given the discretion of assigning, only when appropriate, an ecclesiastical district to a recognised church as a means of avoiding geographical overlap of the Mission coverage of the Diocese, such discretion to be exercised in accordance with appropriate consultative procedures.
- (c) The restriction on a group of persons who are "part of the Anglican church in a parish" from becoming a recognised church should be removed and replaced with a requirement that the consent of the minister and parish council be required for a parish group to become a recognised church. Where such consent is not included as part of a proposal for recognition, the regional council should be required to

- approve the proposed separation of the group from the parish with any decision made by the regional council to be subject to an appeal to the Standing Committee.
- (d) The right of a regional council to formally initiate a proposal for recognition of a church under the Ordinance should be discontinued.
 - (e) As an additional criterion for recognition of a church, any proposal for recognition should include satisfactory evidence that a substantial number of the members of the church support the proposal.
 - (f) The definition of church under the Ordinance should be amended to include the concept of "public worship".
 - (g) The mechanism under clause 12 of the Ordinance whereby an appeal can be made to the Archbishop if the criteria for recognition cannot be met should be discontinued.
51. The committee also recommended that –
- (a) A comprehensive review of our existing structures for administering ministry within the Diocese should be initiated. Such a review should include consideration of whether, as a matter of policy, ministry within the Diocese should primarily be undertaken by parishes with many congregations or by many congregations with parish status.
 - (b) The Archbishop and the Mission Taskforce should be asked to consider the preferred way or ways by which the processes for appointing a person who is not a priest as a minister as a recognised church can be improved having regard to the issues raised in paragraphs 32 to 40 of this report.

Standing Committee's response to the Committee's Recommendations

52. At the Standing Committee's request, a proposed ordinance to amend the Recognised Churches Ordinance 2004 in accordance with the principles set out in paragraph 50 has been prepared and is being promoted to the Synod "by request of the Standing Committee". The Standing Committee recommends that the Synod pass the proposed ordinance as an ordinance.

53. The Standing Committee has referred the matters in paragraph 51 to the Archbishop and the Mission Taskforce for their consideration.

For and on behalf of the Standing Committee

BISHOP ROBERT FORSYTH
Chairman of the Committee

30 August 2004