

25/01 Lay and Diaconal Administration of the Lord's Supper

(A report from a committee appointed by the Standing Committee)

Introduction

1. On 27 October 2001 the Synod resolved as follows –
 “Synod noting its own frequently expressed desire for lay and diaconal administration of Holy Communion and the Archbishop’s comments that he wishes to find a constitutionally legal way to proceed, requests that the Standing Committee appoint a committee to investigate the options, if any, consistent with law, that are available and report back to the next ordinary session of the Synod together with any appropriate legislation. (25/01)”
2. On 10 December 2001 the Standing Committee appointed such a committee comprising Mr Neil Cameron, the Rev Dr Glenn Davies, the Rev Narelle Jarrett, Dr Barry Newman, Mr Bill Nicholson, Mr Robert Tong and the Rev Dr John Woodhouse. The Committee met on five occasions under the chairmanship of Bishop Davies.

Background

3. The proposition that lay people might administer the Lord's Supper has been under consideration in the Diocese for the past 25 years. In 1977 the matter was first raised at the Synod and a number of reports were subsequently brought to the Synod over the succeeding years.
4. In 1981 the question as to whether laypersons might be licensed to preside at the Lord's Supper was addressed by the General Synod Doctrine Commission in its report “Towards a Theology of Ordination.” At the heart of this report was an understanding of priesthood, which precluded laypersons from celebrating the Lord's Supper. The Sydney Diocesan Doctrine Commission responded in 1983¹ with a survey of biblical and historical data concluding that there was “no Scriptural or doctrinal barrier to lay presidency at the Eucharist.” Their conclusion reads as follows –

“If the Christians of the sixteenth century rediscovered biblical doctrine of the *Priesthood* of all believers, Christians of the twentieth century are rediscovering the *Ministry* of all believers. Fundamental to that ministry by all believers is the word-ministry of the pastors and teachers in the congregation which equips the other members for their ministries (Eph 4:11-12). One of these ministries is leadership to be exercised by those members whose gifts of experience and maturity commend them to the congregation. Presiding at the Eucharist is a proper expression of such gifts, and one which is thoroughly in keeping with the “body-members” gifts’ pictures of church life within the New Testament.”²

The report recommended that the Sydney Synod “explore immediately the desirability and constitutional aspects” of lay presidency.

5. From 1983 to 1995 several reports were presented to the Synod, from theological, historical and legal perspectives, each of which consistently endorsed the general position of the 1983 Doctrine Commission Report.³ In particular, the report from the Sydney Doctrine Commission in 1993 concluded –

“In summary, there are no sound doctrinal objections to, and there are significant doctrinal reasons for, lay presidency at the Lord's Supper. There are also sound reasons based on our received Anglican order for allowing lay presidency. In the light of this the continued prohibition of lay presidency at the Lord's Supper does not seem justifiable theologically. Since church practice ought to conform to sound doctrine, practical problems related to the introduction of lay presidency ought to be dealt with, but should not constitute an obstacle to reform motivated by theological truth.”⁴

In March 1995 the Synod passed the second reading of an ordinance to authorise lay and diaconal administration.⁵ It should be recognised that at this stage of the debate, the term “administration” had replaced the term “presidency”, in accordance with the title of the service in the *Book of Common Prayer*.

¹ “Diocesan Doctrine Commission Report:1983. 11/81 ‘Towards a Theology of Ordination’”, 1984 *Year Book of the Diocese of Sydney*, 366-375.

² 1983 Doctrine Commission Report, 374.

³ Some of the history of the debate may be found in a report to the Synod in 1994, “16/94 Lay and Diaconal Administration of the Lord's Supper”, 1995 *Year Book of the Diocese of Sydney*, 427-444. This material is also available on the Diocesan website, www.sydney.anglican.asn.au.

⁴ “Lay Presidency at the Lord's Supper”, 1994 *Year Book of the Diocese of Sydney*, 469.

⁵ A statement outlining the nature of the ordinance at the end of the second reading stage and dealing with related matters appears in “Preaching and Administration of Holy Communion by Lay Persons and Deacons Ordinance 1995: Explanatory Statement”, 1996 *Year Book of the Diocese of Sydney*, 446-450.

The ordinance was deferred on each of four different but successive synods, over a period of four and a half years, which enabled further discussion of the question to take place both within and beyond the Diocese.

6. As a consequence of a resolution of Synod in March 1995, on 7 March 1996 the Primate of the Anglican Church of Australia, the Most Rev Dr K Rayner, referred the following questions to the Appellate Tribunal for its advisory opinion (under Section 63 of the 1961 Constitution).⁶

1. Is it consistent with the Constitution of the Anglican Church of Australia to permit or authorise or otherwise make provision for –
 - (a) deacons to preside at, administer or celebrate the Holy Communion; or
 - (b) lay persons to preside at, administer or celebrate the Holy Communion?
2. If the whole or any part of the answer to the Question 1 is YES, is it consistent with the Constitution of the Anglican Church of Australia for a Diocesan Synod, otherwise than under and in accordance with a Canon of General Synod to permit, authorise or make provision as mentioned in Question 1?

7. The seven-member Appellate Tribunal answered these questions in 1997 as follows -

Question 1 –

- (a) **Yes** (Handley J, Young J, Bishops Chiswell and Wilson)
(Tadgell JA, Bleby J, and Archbishop George dissenting)
- (b) **Yes** (Handley J, Young J, Bishops Chiswell and Wilson)
(Tadgell JA, Bleby J, and Archbishop George dissenting)

Question 2 –

No (Bleby J, Handley J, Tadgell JA, Young J, Archbishop George, Bishop Wilson)
(Bishop Chiswell dissenting)

8. In 1997 the Sydney Synod asked the Diocesan Doctrine Commission to comment, among other things, upon the reasons given by the members of the Appellate Tribunal for their opinions. The conclusion to their report reads, in part –

“...the Doctrine Commission does not consider that sound theological arguments have come to light to overturn the main lines of the earlier reports of the Diocesan Doctrine Commission to the effect that a provision for lay and diaconal administration of the Lord's Supper is theologically acceptable.”⁷

9. In 1998 the second reading of the ordinance, originally promoted in 1995, was recommitted and passed with an even greater majority. The third reading of the ordinance was finally passed by the Synod in 1999. However, the ordinance lapsed due to Archbishop Goodhew's decision to withhold assent.

Legal Impediments to Lay and Diaconal Administration

10. The Committee considered the reasons given by the members of the Appellate Tribunal for their opinion that it is inconsistent with the 1961 Constitution for a Diocesan Synod, to authorise lay and diaconal administration of the Lord's Supper, except by way of a Canon of General Synod. It was noted, however, that no member of the Tribunal considered whether Diocesan Synods have powers to legislate under their own constitutions.⁸ Rather, they confined their observations to the 1961 Constitution. Moreover, the majority of the Tribunal, citing Section 71(1) of the Constitution, argued for a General Synod Canon, on the basis that the authorisation of lay and diaconal administration would constitute a change in the ritual and ceremonial of the Church. Unfortunately, the majority of the Tribunal gave no reasons for this claim. Only Bishop Chiswell argued that –

“such authorisation is a matter of discipline, not ritual or ceremonial, and therefore a matter for which a Diocesan Synod does have the power to permit, authorise or make provision otherwise than in accordance with a Canon of General Synod.”⁹

⁶ That the opinion of the Appellate Tribunal is an advisory one, was a point aptly made by Justice Bleby. “I do not consider that the Tribunal presently constituted is necessarily bound by that answer [of a previous Tribunal] (see s73(1) of the constitution) and particularly as both then and now the Tribunal was and is exercising its advisory jurisdiction.” ⁶ “Reasons of Justice Bleby” in *Appellate Tribunal Opinion: Reference concerning Diaconal and Lay Presidency*, 7 March 1996 (1997), 39.

⁷ “Lay and Diaconal Administration of the Lord's Supper”, *1999 Year Book of the Diocese of Sydney*, 449-459.

⁸ This point was also noted by the 1998 Report of the Sydney Diocesan Legal Committee on the Opinion of the Appellate Tribunal.

⁹ “Reasons of the Bishop of Armidale” in *Appellate Tribunal Opinion: Reference concerning Diaconal and Lay Presidency*, 7 March 1996 (1997), 75.

Nonetheless, it was also noted that a majority of the Tribunal agreed to the proposition that both lay and diaconal administration of the Lord's Supper would be consistent with the 1961 Constitution.

11. The Committee agrees that one legal option for permitting lay and diaconal administration might be the passing of an appropriate General Synod Canon. However, in response to resolution 25/01 of the Synod, the Committee addressed the question as to whether it might be possible to authorise lay and diaconal administration apart from a General Synod Canon.

12. The main reason advanced by the Appellate Tribunal for the requirement of a General Synod Canon to authorise lay and diaconal administration rests on their interpretation of Section 71(1) of the 1961 Constitution which reads, in part –

“Nothing in this Constitution shall authorise the Synod of a diocese or a province to make any alteration in the ritual or ceremonial of this Church except in conformity with an alteration made by General Synod.”

This section declares that the 1961 Constitution is not a head of power, which authorises a Diocesan Synod to make changes in the areas of ritual or ceremonial. However, no part of the 1961 Constitution limits the powers that a Diocesan Synod may have from another source to make such changes.

13. The members of the Appellate Tribunal made no reference to the specific powers of the Diocesan Synods, which vary from State to State throughout Australia. The Committee, on the other hand, directed its attention as to whether the Sydney Diocesan Synod has authority, independent of the 1961 Constitution, to make changes to church law, by virtue of NSW State legislation.

14. While the 1961 Constitution does not provide a head of power for a Diocesan Synod “to make any alteration in the ritual or ceremonial, of this Church” [Section 71(1)], the Committee is of the opinion that the powers given to Diocesan Synods in NSW by the Anglican Church of Australia Constitutions Act 1902 do provide a head of power to authorise such changes.

15. Whereas the 1961 Constitution of the Anglican Church of Australia is a Schedule to an enabling Act of parliament passed in each State, the constitution of each Synod in NSW is found as a Schedule to the Anglican Church of Australia Constitutions Act 1902 (NSW). The title of the 1902 Constitutions (i.e., the Schedule to the Act) is “Constitutions for the Management and Good Government of the Anglican Church of Australia within the State of New South Wales.” Section 2(1) of the 1902 Constitutions (as amended in 1976) provides –

“The Synod of each Diocese 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 this state.”

It is a well-settled principle of constitutional law that where there is a grant of legislative power to a body to make rules for the “good order and government” of that body then this is a grant of legislative power in its widest terms.

16. Section 2(1) contains two limitations to the grant of plenary power, namely, the 1961 Constitution and any other Act which has force in NSW. Examples of limitations to the plenary power, arising under the 1961 Constitution are –

- (a) Section 45(3) of the 1961 Constitution which prevents boundary alterations between Dioceses without a Canon of General Synod; and
- (b) A Diocesan Tribunal must be constituted in conformity with the requirements of Chapter IX of the 1961 Constitution.

17. In NSW there is no specific limitation on the plenary power of a Diocesan Synod given by Section 2(1) in respect to the areas of ritual or ceremonial in general, or the subject of lay and diaconal administration of the Lord's Supper in particular.

18. It is recognised by the Committee that the practice of lay or diaconal administration is not presently authorised in our Church.¹⁰ What currently prevents such practice from being so authorised in the Diocese of Sydney are the provisions of the 1662 Act of Uniformity, specifically Section x.

“...no person...shall presume to consecrate and administer the holy sacrament of the Lord's Supper, before such time as he shall be ordained priest according to the form and manner in

¹⁰ It should also be noted that there are other practices current in our Church, which are not authorised. The Appellate Tribunal in 1996 declined a reference to give an opinion on such practices, which included prayers for the dead and the reservation of the sacrament.

the said book prescribed [*Book of Common Prayer*], unless he have formerly been made priest by episcopal ordination...¹¹"

19. The Act of Uniformity was repealed in England in 1974, but it was still the law of the Church of England in 1961, when the Constitution of the Anglican Church in Australia was passed.¹² In the Red Book Case it was held that although the Act of Uniformity was part of the consensual compact and a necessary part of the trusts on which property was held for the use or benefit of the Church of England in Australia, it was never in force in NSW as a Public Act.¹³

"The *Act of Uniformity* is not in force as a statute in New South Wales, but it is a statute which prescribes both the doctrine and ritual of the Church of England, and therefore equally determines the doctrine and ritual of the Church of England as it exists in New South Wales.¹⁴"

20. Section 71(1) of the Constitution recognises the powers of constitutions of particular dioceses or provinces to alter the consensual compact.

"Every consensual compact and every enactment in force in the Church of England in the dioceses of Australia...shall insofar as they are not inconsistent with this Constitution, continue in force in this Church or in the province or diocese, until altered under this constitution or under the constitution of the province or diocese."

21. The 1902 Constitutions Act originally enshrined a connection between the Church of England in Australia and the Church of England. This meant that whatever was the law of the Church of England was the law of the Church of England in Australia in the Province of NSW, including the Act of Uniformity. This connection was broken by an amending Act (No 21, 1976) to the 1902 Constitutions Act. In other words, prior to 1976, it would not have been competent for a NSW Synod to repeal the Act of Uniformity as part of the consensual compact. This has only become possible since the 1976 amendments to the 1902 Constitutions, given that the 1961 Constitution does not limit the power of the 1902 Constitutions in this regard. Examples of limitations to the plenary powers of NSW Synods that currently exist have been noted in paragraph 16 above.

22. Therefore, in the opinion of the Committee, it is within the competence of the Synods of the Dioceses in NSW to repeal any operation that the Act of Uniformity may still have, as it only forms part of the consensual compact. In that event, the section which forbids anyone, who has not been made "priest" by episcopal ordination, from administering the Holy Communion will then cease to have effect along with any English court decisions based upon it, if applicable in NSW.

The Way Forward

23. Resolution 25/01 of the Synod asked the Committee to investigate the options for a constitutionally legal way forward to proceed with lay and diaconal administration. It should be noted that, in the opinion of the Committee, there is currently no legal barrier to lay and diaconal administration of the Lord's Supper on non-church trust property. Nonetheless, the Committee considers that there are five possible options, three of which require a Canon of General Synod.

- (a) Promote a General Synod Canon which specifically authorises lay and diaconal administration of Holy Communion. If passed, the Canon would need to be adopted by ordinance of the Sydney Synod.
- (b) Employ the existing General Synod Lay Assistants at Holy Communion Canon 1973, with appropriately worded licences for laypersons and deacons whose ministration would include administration of the Lord's Supper.
- (c) Employ the existing General Synod Canon Concerning Services 1992, which permits a minister to use forms of services for which no provision has been made. Since no form of service is currently authorised for allowing laypersons or deacons to administer the Lord's Supper, a minister could permit the use of such a service.

¹¹ Act of Uniformity, 1662 (14 Car. 2, c.4), s. 10.

¹² Section 71(2) of the Constitution states that the law of the Church of England which was in force in the several dioceses of Australia on 31 December 1961 continues to be the law for the Anglican Church of Australia, subject to any changes made in accordance with the Constitution.

¹³ In England in the 1860s various decisions of the Privy Council established that the Church in the colonies was not an established Church but a voluntary association organised on a consensual basis. The concept of a consensual compact is similar to the rules of a club to which a member might belong. In this way those who were members of the Church of England in Australia implicitly agreed that they were bound by the laws of the Church of England, which, while not having the nature of statute law in Australia, were still considered to be binding upon all who called themselves members. For more information on the nature of the law in the Church of England in Australia, see *Canon Law in Australia: A Summary of Church Legislation and its Sources* (General Synod Canon Law Commission Report, n.d.).

¹⁴ Latham CJ, *Wylde v Attorney-General* (NSW) [1948] 78 CLR 224 at 262.

- (d) Promote a Diocesan Ordinance which authorises lay and diaconal administration on the basis that it is a matter of discipline, rather than ritual or ceremonial, and therefore within the competency of a Diocesan Synod to make such a change.
- (e) Promote a Diocesan Ordinance which repeals Section x of the 1662 Act of Uniformity, which would thereby clear the way for the administration of the Lord's Supper by persons who have not been made priest by episcopal ordination.

24. The Committee is of the view that while option (a) is consistent with law, it is unlikely that such a Canon would be passed by the General Synod.

25. With regard to options (b) and (c), neither Canon was intended to authorise lay and diaconal administration, although we note that legislation sometimes has unintended consequences.

26. Option (d) is predicated on the reasons of Bishop Chiswell who argued that lay and diaconal administration is a matter of discipline rather than of ritual or ceremonial. Although it is agreed that a Diocesan Synod is authorised to change matters of discipline, and the Committee accepts Bishop Chiswell's arguments, the majority of the Appellate Tribunal was of the view that the proposed practice was a matter of ritual and ceremonial.¹⁵

27. In the opinion of the Committee, option (e) is the best way forward. Notwithstanding the Opinion of the Appellate Tribunal in 1976, in relation to *An Australian Prayer Book*, "that the Act of Uniformity does not now apply to this Church",¹⁶ the Committee considers it prudent to put the question beyond all doubt by a repeal of Section x of the Act.

Objections

28. Those who claim that the Diocese of Sydney has no power to authorise lay or diaconal administration identify four objections –

- (a) Section 3 of the 1961 Constitution prevents the administration of Holy Communion by laypersons and deacons.

To this it may be answered that the majority of the Appellate Tribunal was not of this opinion. The Committee agrees with this opinion. Certainly there is no support from Scripture for such a prohibition concerning the administration of the Lord's Supper.

- (b) The principles of the *Book of Common Prayer*, preserved by Section 4 of the Constitution prevent lay and diaconal administration.

Again, to this it may be answered that the majority of the Appellate Tribunal was not of this opinion. The Committee agrees with this opinion.

- (c) Section 71(1) of the Constitution states that nothing in the Constitution authorises "the Synod of a diocese or province to make any alteration in the ritual or ceremonial of this Church except in conformity with an alteration made by General Synod." Therefore, since lay administration is a matter of ritual or ceremonial, a General Synod Canon is required to authorise its practice.

Like Bishop Chiswell, the Committee is not convinced that the issue of lay and diaconal administration is a matter of ritual or ceremonial. Even if it were considered to be a change in ritual or ceremonial, Section 71(1) of the 1961 Constitution only states what the Constitution does *not authorise*. In other words, the 1961 Constitution is not a head of power for a Synod of a Diocese in NSW to make alterations in ritual or ceremony, except by way of a Canon of General Synod. Section 71(1) of the 1961 Constitution is silent as to whether there is another head of power located elsewhere which will enable a Diocesan Synod in NSW to make such changes. As argued above, such a power can be found in Section 2(1) of the 1902 Constitutions. There is no indication in Section 71(1) of the 1961 Constitution that the powers of the several Diocesan Synods of NSW, granted by the 1902 Constitutions Act, have been restricted in any way. On the contrary, Section 71(1) of the 1961 Constitution recognises that the consensual compact can be altered under the Constitution of a particular diocese, and it is generally accepted that the repeal of the Act of Uniformity is an alteration in the consensual compact.

- (d) The majority opinion of the Appellate Tribunal also declared that the question as to who administers the Holy Communion is an issue which affects the order and good government of

¹⁵ See Justice Young's reasons published in the *Appellate Tribunal, Opinion* 1997, 30. It should be noted, however, that although Justice Bleby considered that both lay and diaconal administration were inconsistent with the Constitution, he did consider that such a practice was a matter of discipline. "[T]he repeal of S10 [of the Act of Uniformity] and authorising lay persons to preside would amount, in my opinion, to an alteration in a rule of discipline of the Church, and could therefore only be validly made if it were consistent with the fundamental declarations..." Justice Bleby in his reasons published in the *Appellate Tribunal Opinion*, 1997, 40.

¹⁶ Cited by Justice Bleby in his reasons published in the *Appellate Tribunal Opinion*, 1997, 39.

the Anglican Church of Australia as a *whole*. Therefore, a General Synod Canon is the most appropriate instrument to authorise this practice.

The Committee does not agree with this advisory opinion of the Appellate Tribunal.¹⁷ The measure contemplated by the authorisation of lay people to administer the Lord's Supper is not unlike the measure to authorise lay people to preach. It is envisaged that any authorisation within the Diocese of Sydney will be localised, in some cases to only one congregation within a parish. Furthermore, such persons are normally required to have undertaken some form of theological training before being licensed to administer the Holy Communion. That a layperson is licensed to preach in one congregation and not another does not affect other congregations. In the same way, a layperson who is licensed to administer the Lord's Supper in one congregation does not necessarily affect another congregation, let alone another diocese, if such a measure is consistent with the Fundamental Declarations.

Recommendations

29. In accordance with the wishes of the Synod, it is recommended that an ordinance be promoted to the next session of the Synod. Such an ordinance should repeal Section x of the Act of Uniformity in so far, if at all, it applies in the Diocese of Sydney. It should also ensure that no ordinance or any provision of any consensual compact in force in this diocese would prevent the archbishop from licensing a deacon or lay person to assist the minister of a church by administering the Lord's Supper in that church. The circumstances under which lay and diaconal administration should proceed at any service or on any church trust property could be dealt with by way of regulation of the Archbishop at the request of the Synod.

30. It is recommended that the Standing Committee promote the form of ordinance in the annexure at the next session of Synod.

GLENN N DAVIES
Chairman

23 May 2003

¹⁷ See note 6.