

2/03 Congregations of other churches joining the Anglican Church in the Diocese of Sydney

21/04 Associated Churches

(A further report from the Standing Committee)

At its meeting on 26 September 2005, the Standing Committee requested that the bill prepared to give effect to resolution 2/03 and 21/04 be promoted to the Synod subject to all references in the bill, as initially drafted, to “associated” or “association” being replaced with references to “affiliated” or “affiliation” respectively. Where appropriate, the terminology used in this report reflects this decision.

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Background

1. On 27 June 2005, the Standing Committee received the initial report of the committee appointed to consider these resolutions.
2. On receiving the report, the Standing Committee passed the following resolution –

“Standing Committee receives the attached report and –

 - (a) endorses the consultation process referred to in paragraph 16 of the report, and
 - (b) requests that, following such consultation –
 - (i) a further report incorporating the results of such consultation as well as legal matters involved in this proposal be brought to the Standing Committee, and
 - (i) an ordinance and form of association agreement be drafted to give effect to the proposed action referred to in the table annexed to the report and the principles of association set out in the report and that such ordinance be brought to the Standing Committee with a view to its promotion to the forthcoming session of Synod by request of the Standing Committee, and
 - (c) approves the printing of a suitable form of the report for the forthcoming session of the Synod on the understanding that an updated report may be prepared depending on the outcome of the consultation referred to in paragraph (a).”

Disclosure of interests

3. Three members of the committee, namely, Phillip Jensen, Michael Orpwood and John Woodhouse, are members of the boards of reference of at least one independent evangelical church. Typically, the constitutions of the independent evangelical churches establish a consultative body, called a board of reference, to support the church in pursuing its mission. The administration committee of a church may consult with the board of reference for the church on any matter, but must consult with the board of reference when –
 - the church is seeking or selecting a new senior pastor,
 - there is a dispute over the continuing employment of the senior pastor,
 - the administration committee of the church proposes to remove the senior pastor from office,

- the church is considering changes to the statement of beliefs or the mission of the church,
- the administration committee of the church promotes or is aware of any proposal to alter the church's rules.

4. A board of reference can requisition a general meeting of the church. Members of a board of reference are not members of the independent evangelical church and therefore have no voting rights at a general meeting. So far as the members of the committee are aware, consultation between a church and its board of reference has taken place only once.

Consultation with other congregations and churches

Congregations in other Protestant Churches

5. The Synod resolutions suggested that there were 2 groups who may wish to affiliate with or join the Anglican Church in this Diocese and with whom consultation should, therefore, take place. The first group comprised congregations in other Protestant Churches. The second group comprised the independent evangelical churches.

6. It is difficult to gauge the interest of congregations in other Protestant Churches. For example, EMU (Evangelical Members within the Uniting Church in Australia, previously known as Evangelical Ministers of the UCA) emerged as a consequence of opposition to ordination of practicing homosexuals just prior to the 1997 Assembly of the Uniting Church. EMU has been established 'to encourage an evangelical contribution to the Uniting Church and to provide support for evangelical ministers, members and congregations'. EMU seeks to preserve the unity of the Uniting Church and affirms its place within the Uniting Church.

7. In its publication *Travelling Emu* (Winter 2005), Dr Howard Bradbury of Canberra gives these statistics, which are Australia-wide –

Time period	Number of attenders lost by UCA	Number of split churches*	Number of new congregations	Number of ministers		Lay pastors, youth workers resigned/ret
				Resigned	retired	
1997-2000	1834	22	9	8	0	0
Since July 2003	4734	87	32	28	7	8
Total from 1997-present	6568	109	41	36	7	8

* A congregation is considered to have split if 15 or more attenders have left over the homosexuality in leadership issue. The average loss per UCA congregation is 50.

In commenting on the nature of the new congregations which have emerged, it is said that they range in size 'from 650 down to house churches of less than 5 people'. Some congregations are affiliated with other non-Anglican churches, but most are non-affiliated.

8. Because the committee has not known how to contact congregations such as these, it has had no consultation with them concerning the terms of its report.

Independent evangelical churches

9. On 15, 16 and 17 August 2005, a conference was held in New South Wales which was attended by representatives of 13 independent evangelical churches from New South Wales, Queensland, Western Australia and the ACT. Michael Orpwood and Phillip Jensen participated in this conference.

10. The independent evangelical churches unanimously welcomed the offer of assistance from the Diocese of Sydney and endorsed both the range of benefits and the terms on which it was proposed they would be made available.

11. An additional matter was raised for consideration. The current policy of the Federal Attorney General's Department makes it difficult for pastors of independent evangelical churches to be authorised as religious marriage celebrants. They asked whether inquiry could be made to see if authorisation might be facilitated through affiliation with the Diocese.

Consultation with diocesan bodies

12. Since the initial report was presented, there has been consultation with some of the diocesan bodies affected by the recommendations in the report. In particular, comment has been sought from the Sydney Diocesan Secretariat, the Property Trust, the Sydney Diocesan Superannuation Fund Board, the Director of the Professional Standards Unit and the Finance and Loans Board.

13. In summary, the results of this consultation to date are as follows –

- The Sydney Diocesan Secretariat approved in principle the provision of services for which it is responsible set out in the table to the initial report. Further, it saw no obstacle to the extension of its powers, authorities, duties and functions set out in clause 6(a) of the Sydney Diocesan Secretariat Ordinance 1973 subject to approval of the final wording by the Secretariat for the purposes of the provision of these services to affiliated churches.
- The Finance and Loans Board indicated its willingness to cooperate to the fullest extent it can in facilitating and accommodating affiliated churches subject to the limits of its ordinance and financial resources. In particular the Board referred to a number of issues that would need to be resolved before its lending activities could be extended to affiliated churches; for example, it is currently authorised to make loans only to parishes and diocesan organisations within the Diocese.
- The Property Trust has indicated that the matter of extending diocesan insurance cover to affiliated churches involves a number of complex issues (such as the attitude of insurers, the relationship between Property Trust and trustees of the property of the affiliated church, the need for such churches to comply with diocesan risk management practices). Until a more specific proposal is received the Property Trust was unable to comment further except that any proposal to effect insurance for affiliated churches will need to be considered on a case by case basis.

14. Comments have not yet been provided by the Superannuation Fund Board or the Professional Standards Unit.

15. The committee considers that there is clearly a need to consult further with diocesan bodies which are affected by the recommendations in the report before it is possible to determine the extent to which any benefits can be provided to affiliated churches by these bodies. For this reason, the form of the draft ordinance attached to this report establishes a process by which churches declared to be affiliated with the Diocese can enter into an agreement under which certain approved benefits might be provided without specifying how such benefits should be provided by particular diocesan bodies. The ordinance requires the Standing Committee to make such ordinances and to take such other action as it considers necessary or desirable to resolve the details of whether and how any of the possible range of approved benefits can be properly provided to affiliated churches.

Legal matters

16. There are 2 matters of a legal nature arising from the initial report and the consultation which need to be addressed.

Membership of Synod

17. The initial report recommended that Synod membership be offered to an associated (now affiliated) congregation or church for the reasons set out in paragraph 12 of that report. Principally, affiliation was desired to be on the inclusive basis of Christian fellowship rather than to be a purely business arrangement. However, doubts have been expressed as to the constitutionality of such an affiliation.

18. Membership of the Diocesan Synod is determined by the 1902 Constitutions (that is, the constitutions set out in the Schedule to the *Anglican Church of Australia Constitution Act 1902*). The first constitution provides –

“The members of the Anglican Church of Australia in each Diocese within the State shall meet in Synod as hereinafter provided.”

Section 74 (1) of the 1961 Constitution (that is, the constitution set out in the Schedule to the *Anglican Church of Australia Constitution Act 1961*) defines who is a member of the Anglican Church of Australia in these terms:

“Member of this Church’ means a baptised person who attends the public worship of this Church and who declares that he is a member of this Church and of no church which is not in communion with this Church.”

The sixth constitution of the 1902 Constitutions provides –

- (1) The Synod of a diocese, shall determine by ordinance the classes of persons who shall be summoned to any future synods and the rules which shall apply regarding any necessary qualifications or conduct of elections or other means of determining the membership of such classes.
- (2) The rules in force when this provision takes effect shall continue to apply until varied pursuant to this clause.

19. The question raised by these provisions is whether or not the sixth constitution is limited by the first constitution. If the first constitution limits the sixth constitution, the Synod, under the sixth constitution, can select the Synod membership only from among the members of the Anglican Church of Australia in the Diocese. If the sixth constitution is not limited by the first constitution — if it comprises an independent and additional source of constitutional power — the Synod can admit to membership, in addition to persons who are members of the Anglican Church of Australia in the Diocese, persons who are not.

20. Despite the principle of law that says that constitutional provisions are generally to be given a plenary construction, the phrase in the first constitution ‘as hereinafter provided’ suggests that the sixth constitution is limited by the first constitution and therefore authorises only the determination of classes from within members of the Anglican Church of Australia in the Diocese. If this is the case, it is not competent to offer Synod membership to others.

21. The constitutional provisions would not prevent the granting of some other basis of affiliation with the Synod, say in the form of ‘affiliate membership’ under which a person could attend and speak, but not vote. This is further addressed in paragraph 28.

Authorisation as religious marriage celebrants

22. As noted above in paragraph 11, the pastors of independent evangelical churches have asked if they can be authorised as religious marriage celebrants through affiliation with the Diocese.

23. Under the *Marriage Act 1961* of the Commonwealth, the Anglican Church of Australia is a ‘recognized denomination’. Such a body is able to nominate its celebrants directly for registration as marriage celebrants. Section 29 (a) of the Act provides that to qualify for nomination a person must be a minister of religion of the recognized denomination. In section 5 of the Act, ‘minister of religion’ is defined, so far as relevant, to mean ‘a person recognized by a religious body or a religious organization as having authority to solemnize marriages in accordance with the rites or customs of the body or organization.’

24. Many of the pastors of independent evangelical churches are Anglican-ordained clergy who resigned their positions and surrendered their licences on leaving the Diocese. They would not now be regarded as ministers of the Anglican denomination. Although it might be possible to grant them, say, status as an affiliated minister, it is not clear that this would bring them within the intent of the Act.

25. An Anglican-ordained minister who holds a general licence may act as a marriage celebrant. Where a form of affiliation is entered into with an independent evangelical church, a pastor of which is an ordained Anglican clergyman, there would be nothing to prevent the Archbishop from issuing the clergyman, if otherwise suitable, with a general licence.

26. In circumstances where a pastor is not an ordained Anglican clergyman, it is not recommended that the Diocese seek to nominate the staff of independent evangelical churches as marriage celebrants.

Further consideration of the form of affiliation

27. As a consequence of the consultation and after further consideration by the Committee, the following basis of affiliation is proposed.

28. The Synod or the Standing Committee would be given the power to declare non-Anglican churches (or congregations) or groups of non-Anglican churches to be affiliated with the Diocese. A church which is either itself subject to such a declaration or a church which is a member of a group subject to such a declaration is an “affiliated church”. The making of the declaration would have the following consequences –

- (a) Sydney Anglican clergy who minister in such churches are not to be treated prejudicially in any consideration of that person’s appointment to a position in the Diocese if they decide to return to minister in the Diocese, and
- (b) it would grant the right to specified representatives of such churches to attend the Sydney Synod and to have the same right to speak as a member of Synod, but not a right to vote, and

- (c) if a pastor of the church is an ordained Anglican clergyman, the Archbishop is encouraged to offer a general licence to the clergyman to address the issue of being authorised as a religious marriage celebrant, and
- (d) it would create the opportunity for an agreement to be entered into between the Standing Committee and such a church for access to a range of approved benefits, subject to any necessary safeguards.

A declaration, and any agreement entered into as a consequence of such a declaration, would be terminable at will by either party.

Ordinance and form of affiliation agreement

29. A form of ordinance to give effect to the recommendations in the initial report and this report is attached.

30. A form of affiliation agreement has not been prepared. A proforma agreement could be prepared after the Standing Committee has resolved further details regarding the proper delivery of benefits to affiliated churches as referred to in paragraph 15 above. Further, each affiliated church will need to be dealt with on a case by case basis and accordingly any proforma agreement, once prepared, will need to be adapted for any church which wishes to enter into an agreement.

Conclusion

31. At this time it is not known how many congregations or churches will seek to become affiliated with the Diocese or whether any congregation or church will enter into an agreement with the Diocese as envisaged in this report. The acceptance of this report and the passing of an empowering ordinance will, however, constitute a powerful expression of the Diocese's goodwill towards and commitment to the continued support and encouragement of congregations and churches with which it shares a unity in the gospel.

Recommendations of committee

32. It is recommended –
- (a) that this report be received, and
 - (b) that a suitable form of this report be printed for the Synod as a supplementary report of the Standing Committee, and
 - (c) that the draft ordinance attached to this report be promoted to Synod "by request of the Standing Committee".

Standing Committee's response

33. The Standing Committee has agreed to implement each of the recommendations of the committee referred to in paragraph 32 subject to all references in the bill, as initially drafted, to "associated" or "association" being replaced with references to "affiliated" or "affiliation" respectively. It is considered this change is a helpful means of distinguishing this bill from the similarly named bill for the Associated Congregations (Amendment) Ordinance 2005.

For and behalf of the Standing Committee.

ROBERT WICKS
Diocesan Secretary

16 September 2005