

PRESIDENTIAL RULING No. 29

On September 17th 2013 the President received a request for a Presidential Ruling from the Moderator of the Synod of Victoria and Tasmania on behalf of members within the bounds of the Synod. The President has made a ruling in response to the request and provided a Ruling on September 30th.

Regulation 3.6.4.3 (a) (vi) provides “that each ruling shall be binding until confirmed, varied, modified, rescinded or over-ruled by the Assembly or by the Assembly Standing Committee on its behalf.” Presidential Ruling No. 29 now comes before the Standing Committee in order that the provisions of this Regulation can be addressed. There is a proposal that Presidential Ruling No. 29 be confirmed.

Terence Corkin
Assembly General Secretary

Introduction

The Moderator of the Synod of Victoria and Tasmania at the request of a number of members of the Uniting Church in Australia (‘the Church’) within the bounds of the Synod (‘the Request’) has sought a Presidential Ruling as to whether Resolutions 13.6.5.6 and 13.6.6.2 of the 2013 Synod of Victoria and Tasmania are contrary to the Constitution and Regulations of the Church..

Specifically, Resolution 13.6.5.6(c) recorded:

‘To declare that, as a matter of urgency, special circumstances exist (Regulation 4.6.3) to allow the Standing Committee, through the Property Board, to initiate the sale of real estate held within the Synod in order to:

- (i) Extinguish the Acacia College debt of \$36.6 million by 31 December 2014;*
- (ii) Recover the level of risk management reserves to an amount of \$7.32 million; and*
- (iii) Provide liquidity for ministries across the Synod to an amount of \$10 million...*

The remainder of Resolution 13.6.5.6 deals with the period of ‘special circumstances’, how the funds will be recovered and the provision of progress reports. Resolution 13.6.6.2 deals with the divestment principles, property types and governance structure for the sale of real estate within the Synod.

In accordance with Regulation 3.6.4.3, the Request was presented in writing and accompanied by a statement of relevant facts. The Request is related to an interpretation of the Constitution and Regulations. I invited the General Secretary of the Synod of Victoria and Tasmania to submit a statement which he did and which I have reviewed.

The Basis of Union

The Request refers to the Basis of Union.

The Basis of Union does not contain any provision expressly relating to property or finance.

Paragraph 15 of The Basis of Union provides that:

“The Uniting Church is governed by a series of inter-related councils, each of which has its tasks and responsibilities in relation both to the Church and the world. ... Each council will recognise the limits of its own authority and give heed to other councils of the Church”.

Paragraph 15 continues:

- (d) The Synod** *“has responsibility for the general oversight, direction and administration of the Church’s worship, witness and service in the region allotted to it, with such powers and authorities as may from time to time be determined by the Assembly”;*

Acts of Parliament

The Request also refers to the Uniting Church Acts which were enacted by each of the State Governments. They constituted Property Trusts as corporations to hold property in trust for the Church:

Part II – Constitution of the Trust

13.(1) Subject to subsection (2) the Trust shall hold, manage, administer and otherwise deal with trust property in accordance with the regulations, directions and resolutions of the Assembly (section 13 of the Uniting Church in Australia Act 1976 (Vic)).

Constitution

The Request refers to the Constitution which contains brief statements in clauses 22, 24, 26 and 32 regarding the responsibilities of Congregations, Church Councils, Presbyteries and Synods. None of these clauses specifically mention property or finance.

Clause 38(b) of the Constitution does include the following provision:-

“(b) ... the Assembly shall have the power:

(vi) subject to the provisions of this Constitution to provide for the control and management of the property and funds vested in the Church”.

Division 5 of the Constitution headed ‘Funds and Property’ includes the following provisions:

“50. The beneficial ownership of all property whether real or personal shall be vested in the Church.

51. There shall be created in each Synod a body corporate ... in which the legal title to all property, except such as may be prescribed, shall be vested.

52. All property vested in a Synod Property Trust shall be held, managed and dealt with in accordance with the rules, regulations, by-laws and resolutions made by or under the authority of the Assembly in that regard.

Clause 38(b) and Division 5 of the Constitution give authority and responsibility to the Assembly for regulating property and finance within the Church, including management and dealings with property that is vested in a Synod Property Trust.

Division 7 of the Constitution provides the Assembly may make Regulations not inconsistent with the Constitution.

As the Constitution itself does not contain any provisions that clearly delineate between the authority of the Synod, Presbytery and Congregation regarding property, it is necessary to consider whether Resolutions 13.6.5.6 and 13.6.6.2 conform to the Regulations of the Church.

Regulations

Part 3.1: Responsibilities of Congregations and Councils

The responsibilities of the Congregation are listed in Regulation 3.1.1. They include:

(viii) “advising the Church Council on property matters affecting the Congregation”

The responsibilities of the Church Council are listed in Regulation 3.1.2. They include:

“(a)... leading the Congregation to a fuller participation in Christ’s mission in the world

(b)(vii) managing the financial affairs and the general administration of the Congregation...

(ix) managing and controlling property in accordance with the Regulations”.

The responsibilities of the Synod are listed in Regulation 3.1.5. They include:

“(k) providing for the effective supervision of property matters within the bounds, in accordance with the property Regulations, including...

(iv) The general oversight and management of Synod funds and of Synod policy and procedures relating to property; (See Part 4 of these Regulations)

Part 4: Property

Regulation 4.4.1 sets out who has responsibility for property and is qualified by the opening words:

“Subject to the Regulations, the by-laws of the Synod and the rules of the Presbytery, the Church Council shall be responsible for the management and administration of all property of the Church acquired or held for the use of the Congregation ...”

The Congregation does not have legal title to Church property. It has the benefit of the use of the property for the purposes of the Congregation as set out in Regulation 3.1.1 and its Church Council has the responsibility of management and control or administration of the property.

Regulation 4.6.1 provides:

(a) A proposal for the purchase, sale, mortgage, lease or the granting or acquiring or disposing of or surrender of any estate or interest in any real property or the erection, demolition or enlargement of a church or other building, or any borrowing of money, may originate in a Church Council or other responsible body or committee thereof, or in a Congregation.

The Regulations contain a number of provisions that impose requirements and limitations on Congregations, their Church Councils and other bodies within the Church that are responsible for management and administration of property with regard to property:

- As mentioned below, Regulation 4.2.1(d) gives the Synod Property Board the authority to make the final decision with respect to any property proposal emanating from Presbyteries, Church Councils, institutions or agencies.
- Regulation 4.6.3 provides that Church Council, Presbytery and Synod approvals are pre-requisites for real estate transactions unless ‘special circumstances are declared to exist by Synod or Synod Standing Committee’.
- When a sale of real estate receives the requisite approvals, Regulation 4.8.1(b) provides that the proceeds shall be applied ‘in the fulfilment of the conditions (if any) imposed by the Synod when consenting to the sale’.
- Regulation 4.11.1 gives the Standing Committee of the Synod “power to determine ... matters relating to the use or disposal of property or demolition of any building when a recommendation is made pursuant to Regulation 4.11.1” (‘unsafe buildings’).
- Regulation 4.11.10 provides that the Synod can classify property as available for ‘Alternative Missional Use’ if recommended by the Presbytery following consultation with the Congregation and its Church Council.
- Regulation 3.4.4 requires the Presbytery to ensure that proper arrangements are made to deal with any property affected by the amalgamation or division of congregations.

Regulation 4.2.1 provides:

“Each Synod shall appoint a Property Board which shall:

- (a) advise the Synod with respect to policies relating to property within the bounds of the Synod;*
- (b) supervise the implementation of the Synod’s policies in regard to property within the bounds of the Synod;*
- (c) consult where appropriate and advise Presbyteries, Church Councils, institutions and other agencies of the Church with respect to property matters within their bounds;*
- (d) receive proposals with respect to property matters submitted to it by the Presbyteries, Church Councils, institutions or agencies, ensure that each proposal is in accordance with the policies of the Synod with respect to property matters, development and mission and give the final decision with respect to such proposals;*
- (e) initiate proposals with respect to property matters”*

This Regulation clearly provides that the Synod can either receive or initiate proposals. I also observe that the requirements and limitations imposed on congregations as listed above are specific having regard to the broad nature of the responsibilities of the Congregation.

'Property' is defined in Regulation 4.1 to include money, investments and rights relating to property. The Synods' responsibilities in relation to property, so broadly defined and particularly with regard to the Property Trusts, legal liability and Regulations 3.1.5(k) and 4.2.1, require the Synods to exercise responsibility for prudential matters, especially where the Church is put at risk. For example, Regulation 4.11.1, specifically recognises that the Synod is the appropriate council of the Church to deal with issues arising from "unsafe buildings".

Special Circumstances

Regulation 4.6.3 provides the Synod does not need the approval of the Church Council or other responsible body when deciding to sell (or otherwise deal) with Church property where '*special circumstances are declared to exist by Synod or its Standing Committee*'.

There is no definition of 'special circumstances' in the Regulations.

The Request acknowledges that the Regulations do not define 'special circumstances' and asserts that meaning must therefore be given to the term in the context of the Basis of Union, the Constitution and the Regulations. Further, the Request asserts that it must refer to:

'a particular circumstance, not a general application to almost all Uniting Church properties in the Synod. In addition, if such circumstances are to be relied upon...it can only refer to circumstances that are so extraordinary that there is no other alternative open to Synod.'

I do not agree. I see no reason to interpret the words in a restrictive manner. I do not see any reason why, for example, a debt of millions of dollars should not be considered by the Synod to be a matter which is relevant to the making of a declaration of special circumstances.

I note that the Synod Property Board may initiate proposals with respect to property matters under Regulation 4.2.1(e) and see no reason why it cannot initiate proposals for declaring special circumstances under Regulation 4.6.3.

The purpose of the declaration of special circumstances

In Resolution 13.6.5.6, the Synod resolved:

'(c) To declare that, as a matter of urgency, special circumstances exist (Reg 4.6.3) to allow the Standing Committee, through the Property Board, to initiate the sale of real estate held within the Synod in order to:

***Extinguish the Acacia College debt of \$36.6 million by 31 December 2014;
Recover the level of risk management reserves to an amount of \$7.32 million;
and
Provide liquidity for ministries across the Synod to an amount of \$10 million...***

At issue is whether subparagraph (iii) may be implemented in a manner inconsistent with Regulation 4.11.10. Regulation 4.11.10 is a new Regulation which applies to property acquired or held for the use or benefit of a Congregation and for which the Church Council is responsible for management and administration. It provides that the Synod can classify such property as available for 'Alternative Missional Use' if recommended by the Presbytery following consultation with the Congregation and its Church Council. The process leading to the classification can be initiated by the Congregation and the Church Council or the Presbytery but not by the Synod. The purpose of classification of a property for 'Alternate Missional Use' is to allow the property, or income from or proceeds of sale of the property, to be used for specified missional purposes including Synod or Presbytery approved strategic mission initiatives or 'such other missional priorities as the Synod determines'.

While Regulation 4.6.3 provides no guidance on the process that is to be employed should a Synod declare that special circumstances exist; Regulation 4.11.10 provides a very specific process where the Church determines to reallocate property for "Alternate Missional Use." Subparagraph (iii) raises the issue whether the Synod could bypass the particular process required by Regulation 4.11.10 by choosing to sell Congregational property under a different regulation. Since regulation 4.11.10 was approved after Regulation 4.6.3 it must be assumed that the Assembly intended that where property was to be released for alternate missional use then the requirements of Regulation 4.11.10 should be followed. The use of funds anticipated by Synod resolution 13.6.5.6(c)(iii) is an alternate missional use of property, including it must be assumed congregational property. The specificity of the provisions in Regulation 4.11.10 relating to the roles of the Congregation and Church Council in this

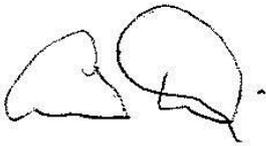
process and the limitation on the role of the Synod restrict the action which the Synod may take, for example, following a declaration of special circumstances under Regulation 4.6.3. The proposed provision of liquidity for ministries across the Synod by sale of property appears to raise missional issues and, in the case of Congregational property, as defined in Regulation 4.11.10, those issues are more appropriately dealt with under Regulation 4.11.10.

The actions anticipated in sub paragraphs (i) and (ii) ie paying down debt and recovering the level of risk management reserves are not purposes for which properties may be classified for 'Alternative Missional Use' under Regulation 4.11.10 and so any process related to property that addresses these issues is not required to conform with Regulation 4.11.10 even though missional issues will be considered when deciding which properties to sell.

Ruling

I rule that

1. Resolutions 13.6.5.6 (a), (b), (c) (i) and (ii), (d), (e) (i), (ii) and (iii) and (f); and 13.6.6.2 of the Synod of Victoria and Tasmania conform to the Constitution and Regulations of the Church subject to the qualification mentioned in Ruling 3 below;
2. Resolution 13.6.5.6(c) (iii) and (e)(iv) do not conform to the Regulations of the Church as they fail to comply with the process required by Regulation 4.11.10 in so far as they relate to 'Congregational property', as defined in the Regulation;
3. The application of the divestment principles to the property types mentioned in Resolution 13.6.6.2 is restricted by my Ruling 2 above.



Rev Dr Andrew Dutney
President

Confirmed by the Assembly Standing Committee, November 2013.