

## **Delegation of Powers and Ordinance Procedure Ordinance 1973 Amendment Ordinance 1995**

### **Explanatory Statement**

#### **Introduction**

1. The Bill for this Ordinance is at the committee stage, having been deferred at both the 1993 and 1994 sessions of the Synod. Synod Resolution 29/92 reads -

“Noting the views expressed in the report on the *Development of Parish Property and Ministry*, concerning the need for Section 26 of the Anglican Church of Australia Trust Property Act 1917 to be more flexible, this Synod requests Standing Committee to promote whatever amendments may be necessary to that Act to allow the Synod of the Diocese in some cases to determine on matters relating to property held for the benefit of a particular parish and to prepare for consideration at the first ordinary session of the next Synod an ordinance embodying the principles to be observed and procedures to be adopted in the exercise by Synod of the power envisaged to be conferred by the amendment to the Act.”

2. Section 26 of the 1917 Act empowers the Synod of each diocese in New South Wales to direct, by ordinance, that property be sold, etc. However, it also says that for the Dioceses of Sydney and Canberra/Goulburn no such ordinance in respect of property held for the sole benefit of a particular parish shall be assented to -

- (a) without the consent in writing of a majority of the members of the parish council (if any) for the time being of the parish; and
- (b) in the case of property gratuitously granted or assured within the 20 years preceding by any donor, without the consent of such donor if living.

3. The Standing Committee reported to the Synod in 1993 (see pages 389 to 399 of the 1994 Year Book), recommending that the Delegation of Powers and Ordinance Procedure Ordinance 1973 (the “Ordinance”) be amended in the manner contemplated by the Synod.

#### **Further Thoughts?**

4. But in 1994 the Synod passed resolution 43/94 -

“Synod requests the Standing Committee, in promoting to the State Parliament the amendment to section 26 of the Anglican Church of Australia Property Trust Act 1917 pursuant to Synod resolution 29/92, to include in the amendment sought a provision that an ordinance dealing with property held for the sole benefit of a parish may not

be assented to, in any case where the consent of a majority of the members of the Parish Council has not been received, unless that ordinance is approved by a majority of not less than two-thirds of the members of Synod present and voting."

**Details of the Bill**

5. Under the Bill two new clauses will be inserted into the Ordinance to enable the Synod to consider proposed ordinances about church trust property held for a particular parish where the consent of the majority of the parish council (if any) is not forthcoming.

6. Under new clause 21, if the consent of the majority of the parish council is not forthcoming, only the Synod will have power to pass the proposed ordinance.

7. Under new clause 22, if the consent of the majority of the parish council is not obtained, the Standing Committee must consider whether it is in the best interests of ministry in the Diocese that the ordinance be passed. If so, it must report its reasons and refer the proposed ordinance to the Synod.

8. The new clauses, if passed, start on the date section 26 of the 1917 Act is amended to remove the proviso as it applies to this Diocese.

**Progress on Resolution 43/94**

9. The Diocese of Canberra/Goulburn (being the only other Diocese in New South Wales to which the provisos to section 26 apply) is willing to be a party to a submission to the Attorney-General for an act to amend section 26 in the following respects -

- (a) to repeal the proviso to section 26 in so far as it applies to the Diocese of Canberra/Goulburn; and
- (b) to amend the proviso to section 26, in so far as it applies to the Diocese of Sydney, in the manner contemplated by resolution 43/94 (consequential amendments to other sections of the Act will also be required).

10. The terms of a submission to the Attorney-General are being finalised.

**Recommendation**

11. The Standing Committee recommends that the Synod pass the Bill. Consideration of the Bill will start at the Committee stage.

For and on behalf of the Standing Committee

MARK PAYNE  
*Legal Officer*

8 August 1995