

Lutheran Church of Australia

Review of the Church's Constitution and By-laws

Phase 1

TERMS OF REFERENCE

BACKGROUND

At its meeting in February 2018, the GCC resolved that the Constitution of the Church be reviewed in the next Synodical term. This was reported to the 2018 Convention of General Synod.

The following are some of the key factors that have led to the conclusion a significant review of the LCA Constitution and By-laws is warranted:

1. There are important questions about the risks and benefits of LCA's current single constitution model, which holds together both its ecclesial-related provisions and legal identity as an incorporated association. Other churches have made a distinction between their ecclesiastical character and practice (expressed in a constitution based on an unincorporated association of members) and their organisational functions (reflected in a constitution that serves to meet legal requirements and in a suitable legal entity to carry out governance, administrative and operational tasks)
2. The culture of the Church has changed. In 1966 there was a stronger understanding by members, and in particular Convention Delegates, of the teachings of the Church and its practices. Although there is no reference to the Theses of Agreement in the Church's constitution, its role as a basis for much of the Church's practice was well understood but with the passing of time, reliance has been focussed on the content of the constitution, and not its history.
3. The practice and expressions of the Church have and will continue to evolve. Church planting, more fluid membership definitions and changes in approaches to faith formation (e.g. less emphasis on confirmation) are among the changes which challenge the assumptions upon which the constitution and by-laws were based.
4. There are questions about the organisational structure and relationships within the Church. What are the principles that underpin these arrangements and impact on the prospect for change?
5. There have been many changes in governance practice over the past fifty years. In 1966 any management or operational 'policy' of the Church was documented by means of By-Laws. By-Laws are no longer used in modern institutional constitutions and largely replaced by policy. The regular changes to the By-laws (a number of changes were adopted at the 2018 Convention of General Synod) highlights a need for the ability to accommodate changes in a timely manner.
6. The constitution contains few definitions and relies on implied understanding. As an example, members today are unable to ascertain what is a confessional, theological or doctrinal matter – all these words are used in the constitution and are often interpreted as being inter-changeable.
7. The Synod-approved review of the Church's Ecclesiastical Discipline policies and processes will include an assessment of Article 10 in the Constitution and related By-Laws, which deal with Church Discipline.
8. The constitution as currently written has evolved and contains, as a

consequence, contradictions and lack of clarity in regard to key governance, management, operational and practice matters.

9. Changes in the external environment impact on the LCA. In more recent years, the Federal and State Government authorities that have oversight of incorporated bodies (SA Associations Incorporation Act and establishment of the Australian Charities and Not-for-Profit Commission (ACNC)), have required a stronger emphasis on governance principles in institutional constitutions and the development of policies that demonstrate governance and consistency over management and operations of an entity.
10. The recommendations of the Royal Commission into the Institutional Sexual Abuse of Children will also require further policy development to ensure the Church's compliance with any legislation the Federal Government will introduce.

In summary, the exercise of providing further band-aids to the current constitution may only result in further risk of confusion and non-alignment with current governance and management principles.

It is not considered feasible, or necessarily desirable, to aim for the submission of a new constitution for approval at the next Convention of General Synod, given the depth and complexity of the issues to be addressed. The terms of reference aim to, by the 2021 Convention of General Synod, identify and analyse the key issues and establish the Key Principles that will be presented for approval as the framework that will guide the development of a new constitutional structure.

PURPOSE

To achieve a Constitutional framework that has longevity and reflects who we are, why we exist, how we are governed, is consistent with contemporary standards, and be of such a nature that requires minimal changes over time the review will:

- 1 Define the relevant issues and concerns with the current constitutional arrangements; including, but not limited to the matters raised above;
- 2 Analyse the identified issues, seek professional advice where necessary, and engage with interested parties;
- 3 Establish the key principles that will underpin the changes to the constitutional framework;
- 4 Where appropriate, identify and examine constitutional and organisation structural arrangements used in other churches;
- 5 Call for and receive submissions from and, as necessary, engage directly with interested parties;
- 6 Examine any other relevant matters; and
- 7 Make recommendations in a final report to the General Church Board that would provide guidance for engaging with General Synod in 2021.

SCOPE OF WORK

Analysis and Principles Setting

The scope of work in Phase 1 will require an analysis of the following issues in the following areas:

1. Ecclesial and theological – how we represent the LCA as Church (including the LCA's self-understanding of Church and Ministry);
2. Governance and accountability (including issues such as Authority & Powers);
3. Relationships (including between districts, congregations, institutions, agencies and churchwide)
4. Legal and compliance (policies, legislation, regulation);
5. Operations (including finance, personnel)

The methodology will be determined by the review team in a manner that it considers necessary to achieve its terms of reference and will include the engagement of representatives from key parts of the church from the beginning of the project in an effort to bring everyone along the process together, identifying and working through the issues collaboratively.

REVIEW GROUP

A facilitator will lead and facilitate this process. The facilitator will be supported by a Review Group which will provide advice and assistance throughout the process. The membership will consist of:

- a) One GCB member;
- b) Five members with experience and knowledge in churchwide and district governance and constitutional matters;

The Executive Officer of the Church will provide logistical and secretarial support to the Group.

The Standing Committee on Constitutions will receive regular reports on progress, and provide input and advice as necessary.

MEETINGS

The facilitator and the Review Group will establish its own schedule of meetings, which it considers necessary and appropriate to satisfy the requirements of the Terms of Reference.

TIMEFRAME

An interim report will be submitted to GCB by no later than 3 June 2020.

A final report with recommendations will be submitted to GCB by no later than 3 February 2021.

GCB Approved
20 September 2019