



LUTHERAN CHURCH

OF AUSTRALIA

NSW AND ACT DISTRICT DISTRICT CHURCH COUNCIL

October 2022

Proposed Changes to the District Constitution and By-Laws

The District Church Council submits a revised constitution and by-laws for consideration by Synod. Some of the changes are essential. As a registered charity, our constitution must state that funds can be spent only to further our charitable objects, and in the case of dissolution, can be distributed only to another registered charity. Other changes conform our constitution to the model district constitution set out in the LCA constitution. The final set of changes is intended to eliminate the inconsistencies which creep into a document when it is amended piecemeal over many synodical terms.

The District Church Council has proposed the following motions:

BE IT RESOLVED that the District petition the General Church Board of the Lutheran Church of Australia to replace the Constitution of the District with 2022 NSW ACT District Constitution.

BE IT RESOLVED that the District adopt 2022 NSW ACT District By-Laws as the by-laws of the District.

The District Model Constitution and By-Laws Part A

The constitution of the General Church includes a model district constitution and "By-Laws Part A". Districts are expected to adopt constitutions and Part A "in accordance with" the model. Exceptions are allowed for state law and "*local conditions*", subject to the approval of the General Synod or General Church Board. A district "*may petition*" the

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General Church to amend the district constitution or Part A.¹ Districts are free to draft their own "By-Laws Part B", which must be *"not inconsistent"* with the constitution and Part A. Formal approval by the General Church is not required for either the initial draft of Part B, nor of amendments.

Elimination of By-Laws Part A

The DCC recommends that we dispense with "By-Laws Part A". If the provisions of Part A are so essential to our Lutheran identity, we suggest that they should be part of the constitution proper. Accordingly, the proposed draft has moved much of Part A to the constitution.

By volume, however, the largest portion of Part A consists of the detailed rules for the transacting of business at district synod. But these rules include a clause that provides that these rules *"may, if the need arises, be suspended in respect to any business of the convention by a two-thirds majority of those delegates present."* Hence the anomaly: A district can't change Part A without the approval of the General Church, but can change the rules set out in Part A by a simple synod vote. The DCC proposes that all rules relating to the conduct of synod business be moved to Part B, where like the rest of Part B, can be changed by synod vote without General Church approval. And without a Part A, Part B becomes, simply, the By-Laws.

Recent and Proposed Changes to the Model Constitution

At the October 2021 on-line sessions, the General Synod moved several amendments to the model district constitution. Voting on several other changes, though, were moved to the February 2023 in-person sessions. None of the amendments seems to be particularly controversial, thus the draft constitution proposed here reflects both the recent and proposed changes.

Not-for-Profit Status

The on-line General Synod amended the model district constitution to include a not-for-profit clause. The rationale was as follows:

¹ ; By a strict reading of the model district constitution, the district itself cannot amend its own constitution or Part A. Instead, a district synod is only empowered to ask the General Church to make the amendments.



This addition is a current legal requirement for charities registered with Australian Charities and Not-for-Profit Commission (ACNC). It follows the same wording as has been applied in other constitutions of the Church.

The DCC acknowledges our legal obligation to adopt the appropriate not-for-profit clause(s). However, instead of using the language proposed for the model district constitution, we start with the language in the ACNC template. In simple terms, the District can only make payments to members at arm's length, or fair market value. And, as noted above, if the District is ever dissolved, our assets can be distributed only to another registered charity, presumably another Lutheran entity.

Delegates to Synod

The district model tracks the LCA constitution, and includes the chairmen of standing committees as voting delegates. Our District's sole standing committee is the Finance Advisory Committee, but we do have LACA, Warrambui, and St Paul's College. The DCC proposes that the chairmen of those three entities be given a vote at Synod, as well as the District Administrator.

Aboriginal and Torres Straits Island Peoples and Preaching Places

The LCA constitution is being amended to include Aboriginal and Torres Straits Island Peoples who are active Lutherans, but who do not form 'congregations' in the traditional sense. Groups of worshippers may apply to the General Church for recognition, which results in their being able to send delegates to the General Synod.

At present, we do not believe that there are any such groups in NSW or ACT. However, the DCC proposes that if a group within the geographical bound of our District is acknowledged by the General Church, it may apply for membership in the District Synod.

'Preaching places' are also groups of worshipping Lutherans who do not constitute a formal congregation. The proposed constitution recognises these groups as having the "spiritual privileges and responsibilities" as a congregation, but are not entitled to send a delegate to synod.



Basis of the By-Laws

The proposed By-Laws are based on the current version, with the addition of the rules for conducting business at district synod from the LCA model district constitution. The clauses have been rearranged to conform to the articles of the Constitution. For example, Article 1 of the Constitution sets out various definitions, while Article BL1 of the By-Laws sets out additional definitions.

Recognising Autonomy of District Entities

The current by-laws set out detailed requirements relating to the governance of five district entities: Lutheran Aged Care Albury, St Paul's College Walla Walla, Lutheran Education VIC NSW TAS and ACT (LEVNTA), the Warrambui Retreat and Conference Centre, and the District Property Trust.

In recent years, the first three entities have incorporated, so as to more easily meet the legal and regulatory requirements that pertain to entities receiving government funds. According to the district by-laws, synod approval is required for changes to their constitutions. However, it proved impossible for the entities to wait until synod to implement the required changes. The proposed by-laws recognise the autonomy of these incorporated bodies (and in particular, the legal rights and responsibilities of their boards of directors), but still acknowledge the District's moral authority over their activities.

Lutheran Education VIC NSW TAS and ACT is a special case. LEVNTA acts as the responsible entity for all Lutheran schools in the southeast corner of Australia. It has always operated out of the Victorian District Office, but under the supervision of a Council which included representatives from our District. Its new form is a company limited by guaranty, whose sole member is the Victorian District (which itself is incorporated). We have executed a memorandum of understanding with the Victorian District, which we submit to synod for ratification, which preserves all of the District's substantive rights under the old arrangement.

The DCC is investigating whether the Warrambui Retreat and Conference Centre should also be incorporated without jeopardising the



Centre's tax-exempt status, If so, similar changes can be expected, perhaps to be voted on by electronic means.

Marked and Annotated Versions

The proposed Constitution and By-Laws have been sent to Synod delegates in electronic form, so as to give delegates as much time as possible to consider the documents. The Synod website also holds marked and annotated versions of the documents, to allow delegates to see how the documents differ from the model district constitution and the current district by-laws.