



Uniting Church in Australia
ASSEMBLY
Assembly Standing Committee

15-17 March 2024

DOCUMENT 5C

Title	Act2 Project – Legal Advice Update
Type of Paper (Information/Decision)	For decision
Assembly or ASC Minute	22.04.03 to delegate to the Assembly Standing Committee to progress the work on behalf of the Assembly and report to the 17th Assembly;
Consultation	
Purpose	To provide an update on the legal advice associated with the proposals contained within Chapter 7 of <i>Act2: The Gift of the Spirit</i> and proposals to provide a process for any changes to the Constitution (particularly for Stream A on Congregations and Church Councils).
Rationale & Findings Summary	The legal advice indicates that: <ol style="list-style-type: none">1. For the Stream A proposals regarding Congregations and Church Councils there may be some additional flexibility through changes to Clause 24 of the Constitution (and some consequential amendments), particularly to implement A.4.2. For the Stream C proposals regarding governance, resourcing and administration we are providing an update on the advice on the best way forward to implement these proposals, particularly to implement C.4 (please note we are not proposing any changes to the Constitution be brought to the 17th Assembly regarding Stream C).
Attachments	
Proposal/s	That the Assembly Standing Committee <ol style="list-style-type: none">1. Request the Act2 Project bring any amendments to the Constitution to the April 2024 meeting of the ASC that would assist in the implementation of the proposals contained within Stream A (Life Giving Communities of Faith and Discipleship) of Chapter 7 of <i>Act2: The Gift of the Spirit</i>.
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ACT2 PROJECT – LEGAL ADVICE UPDATE

Introduction

The Act 2 team has continued to undertake work on the project including the proposals contained within Chapter 7 of *Act2: The Gift of the Spirit*. This has included:

1. Continuing to seek legal advice in relation to the proposals;
2. Continuing to undertake financial analysis to provide a foundation for implementation;
3. Briefing the Moderators and General Secretaries.

Work is continuing on all these areas of work. This includes engaging a firm to support the collection and analysis of financial data. We have also taken on notice some questions from the meeting with Moderators and General Secretaries and incorporating into our planning steps we can take to respond.

The focus of this report is on the implications of the legal advice for the proposals, particularly in relation the Stream A and Stream C proposals.

Stream A Proposals: Life Giving Communities of Faith and Discipleship

It is envisaged that the vast bulk of the changes required within this stream of work under A.4 would be undertaken by changes to Regulations or the issuing of guidance by the Assembly. However, one aspect of the Constitution which may require some consideration is change is Clause 24. While there is presently flexibility within Clause 24 for a joint Church Council, if we are to fully move away from the 'normative' structure being one Congregation with one Church Council it would be ideal for that to be fully reflected in the Constitution. It would still be possible to move forward with the work outlined in Stream A without changes to the Constitution, however there may be some reduction in flexibility.

In terms of process, we are proposing that if the Assembly Standing Committee (ASC) supports moving in the direction of the proposals within Stream A, we would bring back a proposal to the April meeting of the ASC which gives effect to the proposals through an amendment to Clause 24. Our advice is also there will be some small consequential amendments in other parts of the Constitution.

By way of background on process, the practice of the Assembly has been that changes to the Constitution are passed in their final form on the floor of the Assembly in Session. Therefore, to provide flexibility for those undertaking the work on Regulations and guidance it would be preferable to have the changes to the Constitution agreed at the 17th Assembly.

In terms of process from the Assembly, similar amendments to provide for greater flexibility have had a response time from Presbyteries and Synods of 31 December in the year of the Assembly (see ASC Minute 09.39.01; Assembly Minute 09.10.01). Work could commence on the Regulations and guidance subject to the finalization of the approval of the amendments to the Constitution (see Assembly Minute 09.10.02). Therefore, this should not hold up the implementation of new Regulations for a commencement date of 1 January 2026.

Stream C Proposals: Sharing Our Life and Our Common Wealth

We have received advice on how we could approach the implementation of the proposals within this stream of work. It would be the responsibility of the Commission for Governance, Resourcing and Administration to propose the precise mechanisms and steps to implement the direction outlined within the proposals.

The focus the advice we sought was on the implementation of C.4 related to establishing Field Councils. Two options exist:

1. Amending the legislation in each State and Territory to implement the new council arrangements.
2. Establishing a single national body designated to fulfil the small number of functions of a Synod provided for in the State and Territory Acts of Parliament.

The first option is the one pursued by the United Church in Canada in reforms to their council structure. This has taken quite some time to finalise across all jurisdictions. We understand it could be a similarly slow process in Australia. Therefore this is not our preferred approach and it is not recommended.

The second option is our preferred approach and is the approach recommended. The primary function of a Synod provided for in the State and Territory Acts is the appointment of the various Property Trusts. There are other functions including:

- (in some jurisdictions) to approve the application of any residual commission or other remuneration earned by the Property Trust as an executor, administrator or trustee;
- to set the conditions on the use of property jointly with other churches (i.e., other denominations);
- (in some jurisdictions) the power to vary trusts or determinations about the application of certain specified trusts or to resolve ambiguities;
- (in SA) the power to dissolve certain defunct incorporated associations or to vary the constitution of such entities;
- (in WA) the power to incorporate or dissolve certain body corporates.

The detail of whether this is the best mechanism and how this mechanism would work including changes to the Constitution and other legal instruments requires further work by the Commission. However, we are confident on the basis of the advice we have received that it is possible to achieve the objectives of proposals within Stream C. The flexibility within the proposals means we do not believe any changes to the existing proposals are required.

We also believe that the detail which we need to work through and the various potential pathways to getting to the destination strengthen the rationale for the three stage approach to implementation. Therefore, we are not recommending that any changes to the Constitution related to Stream C be brought to the 17th Assembly. If the 17th Assembly decides to move forward with proposals under Stream C then a full package of changes to the Constitution would be brought to the 18th Assembly.