

PRESIDENTIAL RULING 26

The Moderator of the Synod of Western Australia at the request of Rev Dr Michael Owen has sought a presidential ruling on the question whether the resolution of the Synod and/or the Presbytery of Western Australia on manse and proceeds of sale of manse, minuted 38/2006 (Resolution 38/2006) does not conflict with (conforms to) the Constitution and Regulations of the Uniting Church.

I note that, although Resolution 38/2006 was provided as an extract from Presbytery of Western Australia minutes September/October 2006, it is described in the papers provided by the General Secretary of Synod as a Minute of the Synod/Presbytery of Western Australia September 2006.

Resolution 38/2006 recorded:

The Presbytery and Synod agreed by consensus:

1. *to receive the Manse Review report [K.9-2];*

Church Housing Fund

and the Presbytery agreed by agreement:

2. *to authorise the General Council, on the advice of the Church Law Committee, the Synod Property Board and such other relevant bodies as the General Council requires, to make by-laws for the Church Housing Fund (CHF) and such other relevant policies and procedures, noting the following principles and matters needing to be addressed:*
 - a. *the Church Housing Fund to hold cash and real property obtained from congregations when they relinquish the "beneficial ownership" of manse and manse embargoed funds;*
 - b. *the distribution of net proceeds when a congregation relinquishes the 'beneficial interest' in a manse to be:*
 - i. *60% to go to the CHF*
 - ii. *1% to go to the UAICC*
 - iii. *9% to go to the Property Development Fund*
 - iv. *30% up to \$300,000 to go to the relinquishing congregation (regardless if the manse is sold or not);*
 - c. *the distribution of net proceeds when a congregation on relinquishing a manse embargoed fund to be:*
 - i. *70% to go to the CHF*
 - ii. *30% to go to the relinquishing congregation;*
 - d. *the terms and process for the use of the "30% return of proceeds" to congregations for ministry, mission and maintenance;*
 - e. *the criteria for the purchase of a CHF manse and its use;*
 - f. *maintenance arrangements;*
 - g. *the criteria for paying housing allowance from the CHF, noting this to be done on the ability of the CHF to pay; and*
 - h. *any appeal provisions relating to the operation of the CHF and the provision of ministerial housing and allowances.*

Implementation and Transition Arrangements

3. *that all manse be relinquished by 31/12/2011 or when a current placement concludes. As congregations join the Church Housing Fund, they will receive support from it.*

The Presbytery then agreed by consensus that:

4. *congregations begin to relinquish the beneficial ownership of their manse and embargoed funds from 1 January 2007 following consultation with the Property Manager.*
5. *no new sale or transfer of manse embargoed funds to be completed unless within the framework of these CHF principles.*
6. *where there are such matters as*
 - i. *Special manse embargoed fund arrangements;*

- ii. *Heritage or land title issues;*
- iii. *The indebtedness of the congregation; or*
- iv. *Undertakings with respect to a manse that have been previously given*
- v. *Manses that have become an income earning investment*

then, such circumstances are to be reviewed by the Synod Property Board and after consultation with the congregation, the Board is to recommend to the General Council in such a way that will both best preserve the spirit and intent of the CHF and how those special circumstances may be dealt with, noting the right of congregations to access any appeal processes with regard to that money and/or manse.

Other Matters

- 7. *that the Property Board, in conjunction with representation from appropriate Boards and Commissions, undertakes a strategic review of the requirement for manses throughout the Synod, to ascertain those manses that are to be retained by the Church Housing Fund;*
- 8. *the Property Board explore development of properties, wherever possible, to maximise the return on the assets;*
- 9. *the Property Manager, in conjunction with congregations, during the next twelve months undertake a review of all Church property and prepare a five-year maintenance and development plan; and*
- 10. *a review of the Church Housing Fund be undertaken in 2011.*

This Resolution was the outcome of processes that included various decisions and reviews extending back to 1998. The General Secretary of the Synod supplied a copy of the Manses Review Report to the Synod 2006 which included the recommendations to establish the Church Housing Fund. The Report included a statement that the recommendations in that report (similar in substance but not identical to the subsequent Resolution 38/2006) and the proposed by-laws would be a response to the challenge “to discern how best to use our buildings as a resource for mission”. The Report explained the background to the recommendations and also included a statement that “a straw vote indicates that a majority of congregations are happy to transfer the management of manses to the Synod Office” but “noted that there are some congregations that are uncertain and some not in favour”. The conclusion of the report included the following paragraph:

“It is the aspiration of the Synod that all congregations with manses and manse embargoed funds will participate in the scheme. The greater assets in the fund the greater the mission of the whole church can be enhanced. We are aware that this will not be an easy decision for some congregations to make but we believe that this model is a win-win situation for all parties involved....”

Subsequent to Resolution 38/2006, the General Council of the Synod of Western Australia has made by-laws establishing the Church Housing Fund as from 1 January 2007. The by-laws include the following:

“7.9.2 The purpose of the Church Housing Fund (hereinafter called “the Fund”) is to provide housing or housing allowances for ministers and other approved Church workers in active service.

7.9.3 In order to fulfil this purpose, the Fund will:

- (a) *acquire the beneficial ownership of all properties designated or recognised as manses in accordance with the provisions below;*
- (b) *acquire the moneys held from the sale of designated or recognised manses in accordance with the provisions below; and*
- (c) *acquire other moneys by donation from any source, allocation by the Synod or investment of assets.*

7.9.4 The Fund will:

- (a) *make available or acquire, by purchase or lease, houses for use by ministers or other approved Church workers in active service or provide housing allowances;*

- (b) *undertake maintenance and refurbishment of properties used for housing a minister or approved Church worker as necessary.*
- 7.9.6 *The Fund will be managed by the Synod Property Board.*
- 7.9.10 *All manse properties held by Congregations and other Church bodies will be transferred to the Fund at a mutually agreed time or when a placement or appointment using the manse concludes but in no case later than 31 December 2011.*
- 7.9.11 *At the time of transfer, the manse property will be sold or, if the Fund determines to continue holding the property in order to fulfil its purpose, a value of the property will be determined by a valuer jointly agreed by the transferring body and the Fund.*
- 7.9.12 (Not quoted - provides for division of sale proceeds or valuation with thirty percent (30%) but not more than \$300,000.00 to be held in the Uniting Church Investment Fund in a "Manse Realisation Account" in the name of the transferring body.)
- 7.9.14 (Not quoted – similarly provides for proceeds of past sales of manses that are held in the Investment Fund to be divided with thirty percent (30%) but not more than \$300,000.00 to be held in the Uniting Church Investment Fund in a manse realisation account in the name of the transferring body).
- 7.9.19 *When the Fund is requested to provide housing or a housing allowance for a minister or other approved Church worker, the Fund will determine whether such a provision complies with these By-laws. In making its decision in response to such requests, the Fund will seek the advice of the Pastoral Relations and Placements Commission and take due notice of the terms of placement that have been approved by the said Commission in regard to any placement.*
- 7.9.25 *Manse Realisation Accounts are to enable the transferring bodies to be able to access the capital that has previously been invested in the ownership of a manse. The transferring body will have access to these moneys and the interest earned on them for the provision of ministry, mission initiatives and critical maintenance of other properties subject always to the prior approval of the Property Board.*
- 7.9.26 *If there is a dispute in regard to a decision of the Property Board under these By-laws, the matter may be referred by either party to the General Council which will have the sole authority to determine the matter.*

The Basis of Union

Although I am asked to rule on the question whether Resolution 38/2006 conforms to the Constitution and Regulations of the Church, it is appropriate that I refer initially to the Basis of Union.

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

Paragraph 15 of *The Basis* 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 briefly describes the provisions that would be included in the Constitution of the Church relating to the Congregation, the Elders' or Leaders Meeting, the Presbytery and the Synod. It includes:

- (a) members of the Congregation "share in the wider responsibilities of the Church";
- (b) the Presbytery will perform all the acts of oversight necessary to the life and mission of the Church in the area for which it is responsible and will in particular exercise oversight over the Congregations within its bounds, "encouraging them to strengthen one another's faith, to bear one another's burdens ...";

- (c) the Presbytery will also “promote those wider aspects of the work of the Church committed to it by the Synod or Assembly”;
- (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”;
- (e) the matters for which the Assembly has determining responsibility include “matters of government”.

Acts of Parliament

The Uniting Church Acts that were enacted by each of the State Governments empowered the Assembly to adopt a constitution for the Church, and constituted Property Trusts as corporations to hold property in trust for the Church and “to hold, manage, administer and otherwise deal with Trust property in accordance with the regulations, directions and resolutions of the Assembly and with the by-laws of the Synod in so far as such by-laws are not inconsistent with the regulations, directions and resolutions of the Assembly” (section 13(3) of the Uniting Church in Australia Act 1976 (WA)).

Constitution

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

Clause 38(b) includes 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.*
- 53. The Assembly may at its discretion delegate to any Synod power to make by-laws with respect to any property within the bounds or under the control or management of the Synod.*
- 54. No interest in real estate shall be created or leased except in such manner as may be prescribed by the Assembly.”*

Clause 38(b) and Division 5 clearly 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 headed ‘Regulations, By-Laws, Rules and Standing Orders’ includes:

- “63. A Synod may make by-laws not inconsistent with this Constitution or with Regulations made by the Assembly prescribing all matters which by this Constitution are required or permitted to be prescribed in connection with a Synod or which are necessary or convenient to be prescribed for the carrying out or giving effect to this Constitution or for the life of the Church within that Synod.*

So far as I am aware, the Assembly has not delegated to any Synod, pursuant to clause 53, the power to make by-laws with respect to any property within the bounds of the Synod.

In my opinion, the Assembly has authority under the Constitution to prescribe by Regulation or by delegation that Synods and/or Presbyteries may make decisions such as those set out in Resolution 38/2006 and the by-laws for the Church Housing Fund but it has not done so to date.

Since the Constitution does not itself contain any provisions that clearly delineate between the authority of the Synod, Presbytery and Congregation regarding these matters, it is necessary to consider whether Resolution 38/2006, and consequently the by-laws for the Church Housing Fund, conform to the Regulations of the Church.

Regulations

The responsibilities of the Congregation are listed in Regulation 3.1.8. They include:

- “(c) fulfilling the ministry of the Church in and to the community;*
- (f) making arrangements to call a Minister in accordance with the Regulations;*
- (g) providing facilities and resources in support of the work of the Congregation, including stipends and allowances and other provisions for the support of the ministry...*
- (i) advising the Church Council on property matters affecting the Congregation”*

The duties and responsibilities of the Church Council of the Congregation listed in Regulation 3.1.13 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*
- (viii) managing and controlling property in accordance with the Regulations”.*

Regulation 4.4.1 is a more detailed provision regarding the Church Council’s responsibility for management and administration of property. It is qualified by the opening words:

“Subject to these Regulations 4.1.1 to 5.5.10, 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 ...”

Most Congregations have the use of at least one Church building and many have the use of a manse as well as funds and other assets. Usually the real estate has been acquired and the buildings have been constructed with funds raised by the Congregation or its predecessors over periods of years. The titles to real estate are held in the name of one of the Property Trusts to which I referred earlier, in trust for the Church as a whole – not for the Congregation. The Congregation does not have beneficial ownership. It has the benefit of the use of the real estate 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 real estate.

Although the broader statements of responsibilities in Regulations 3.1.8 and 3.1.13, quoted above, confer considerable authority and discretion on the Congregation and its Church Council to determine matters such as the manner in which it will fulfil its ministry, the people that will be employed or engaged in the ministry, and the property and finance that will be acquired and used for its purposes, the Regulations contain a number of provisions that impose requirements and limitations on Congregations and their Church Councils:

- a. Regulation 2.7.4 provides that the Advisory Committee on Church Placements (the membership of which is appointed by the Synod and Presbyteries) determines the full list of placements to which Ministers and ordinands may be called. A Congregation can only call a Minister to an approved placement in the Congregation after the call has been recommended

by a joint nominating committee and been approved by the Presbytery or its Pastoral Relations Committee (Regulation 2.7.16).

- b. Regulation 2.4.21 provides
“Provision for the housing of Ministers in placement and for travelling allowances, leave entitlements, insurances and expenses of such Ministers shall be made in accordance with the determination of the Synod or other determining body.”
- c. Regulation 4.11.2 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”).
- d. Regulations 3.4.4(r), 3.5.12(i) and 5.5.3 (c) relate to contributions from Congregations to Synod and Presbytery. They are payable from the Congregational Fund. However, a Church Council is not required to deposit capital funds such as the proceeds of sale of real estate eg. sale of a manse, in the Congregational Fund. It may establish a property fund or other funds (Regulations 5.5.4 and 5.5.5). Fund monies not immediately required for the purposes of the fund may be invested provided that the amount and the period of investment do not exceed the limits prescribed by the Synod and the investment is of a nature approved by the Synod; and where the amount or period of a proposed investment exceeds the limits set down by the Synod the specific approval of the Synod shall be obtained for the investment made by the Synod investment agency on behalf of the fund concerned (Regulation 5.5.9(b)).
- e. 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’. I am aware that some Synods have policies requiring that a proportion of the proceeds be applied for Synod-wide purposes.
- f. Regulation 4.6.2 provides that a Church Council does not require the prior approval of the Synod Property Board to a lease of property for less than 3 years where the property is not a Church building or Church hall or a Minister’s residence.
- g. Regulation 3.1.5 requires the Presbytery to ensure that proper arrangements are made to deal with any property affected by the amalgamation or division of congregations, and Regulation 3.1.7 makes the same requirement in the case of the disbanding of a congregation.

I have given particular consideration to Regulation 2.4.21. This Regulation is located in Part 2 of the Regulations. The heading of Part 2 is MINISTRY. The preceding Regulation provides for payment of stipends. The sub-heading for Regulation 2.4.21 is PROVISIONS AND ALLOWANCES. The Synod is charged with determining what provisions shall be made for housing of Ministers and other allowances and entitlements. I do not interpret this Regulation as giving the Synod authority to become the provider of all housing for Ministers and to require transfer of all housing for Ministers from Congregations, Presbyteries and other Church bodies within the bounds of the Synod. There is no suggestion of such an intention or authority in the listed responsibilities of the Synod or in the Regulations in Part 4 PROPERTY. Rather, Regulation 4.4.1 gives responsibility for “the management and administration of all property of the Church acquired or held for the use of the Congregation” to the Church Council, responsibility which in my opinion includes Minister’s residences (cf. Regulation 3.1.8(g)). Regulation 4.6.2(b)(ii) also presumes that a Church Council will be responsible for a Minister’s residence. It provides that a Church Council must not lease a Minister’s residence without the prior approval of the Synod Property Board.

The broad nature of the responsibilities of the Congregation, and the specificity of the restrictions on the Congregation and the responsibilities of the Synod and the Presbytery in relation to the matters dealt with in the above Regulations, necessarily cause me to question whether the Synod and the Presbytery have authority to make decisions that may have the following consequences:

- (i) the termination of the use of a manse for the purposes of a Congregation;
- (ii) the termination of the responsibility of its Church Council for management of the manse;

- (iii) the sale or development by the Synod Property Board, of a manse property that is taken into the Church Housing Fund, without the prior consent of the Congregation that has previously had the use of the property, or its Church Council;
- (iv) potentially similar consequences in respect of residential properties that have been acquired for use by non-ministerial staff of a Congregation if the Synod Property Board decides under the by-laws that they 'are designated or recognised as manses'
- (v) a Congregation or its Church Council only being permitted to use particular funds for provision of ministry, mission initiatives or critical property maintenance if the use has the prior approval of the Synod Property Board;
- (vi) the potential implications of any of (i) to (vi) on the manner in which the Congregation desires to fulfil its purposes and responsibilities under Regulations 3.1.1 and 3.1.8.

The Regulations contain a number of other provisions that require consideration in this context. The responsibilities of the Presbytery and of the Synod are listed in Regulations 3.4.4, 3.5.11 and 3.5.12. Given the specificity of the Regulations that I have mentioned earlier, nothing in the listed responsibilities of the Presbytery or the Synod strongly indicates that the Synod and/or Presbytery have, or can assume, authority to make the decisions set out in Resolution 38/2006 or the Church Housing Fund by-laws.

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;"*

Although paragraph (d) of this Regulation states that the Synod can make final decisions concerning proposals in respect of property matters in accordance with its policies with respect to property matters, development and mission, it presumes that those proposals will be initiated by some other council or body within the Church. In other cases, paragraph (c) provides for a consultative or advisory process. In my opinion, the wording of paragraph (b) is not a sufficient basis for the Synod making a policy that will enable it to remove a category of property, namely manses, from the management of Church Councils or potentially from the use of particular Congregations, even after a lengthy consultative process.

Synods have a particular responsibility for prudential matters, especially where the Church is put at risk. However, it is relevant to note that, even in the case of unsafe buildings and properties of Congregations and other Church bodies, that do not comply with legal safety requirements - prudential matters that might have been regarded as clearly within the responsibility and authority of the Synod - the Assembly decided to give the Synod specific authority to make overriding decisions regarding the disposal or future use of such properties when it adopted Regulation 4.11.1.

The papers that were made available to me refer to concerns regarding matters such as variation in manse standards, lack of maintenance in some cases leading to manses becoming unusable, the cost of manse maintenance limiting ministry possibilities, the merits of rationalising maintenance, and the effect of increasing numbers of part-time ministries and of the majority of ministers using the housing allowance because they have their own homes.

The papers also refer to missional issues. "Manses that are redundant and manse embargoed funds held on behalf of congregations need to be freed up so that they may be used more appropriately for mission across the Synod of WA." (Manse Review Report to Synod 2006). However, the Regulations do not give the Synod and/or the Presbytery overriding authority to make decisions affecting use of property and finance 'held on behalf of Congregations' where the Synod and Presbytery consider that they may be used more appropriately for mission. The Regulations grant specific and limited authority to the Synod and Presbytery in matters relating to property and finance held for the use of a Congregation and managed by its Church Council.

I have considered whether the references to by-laws in clauses 52 and 63 of the Constitution, section 13(3) of the Uniting Church in Australia Act, and Regulation 4.4.1 together with the provisions in the

Regulations regarding the responsibilities and powers of the Synod and Presbyteries, implicitly give the Synod (in this case acting with the agreement of the Presbytery) the authority to make the decisions set out in Resolution 38/2006 and the Church Housing Fund By-laws. For example, does the Synod have authority to decide that no later than 31 December 2011 all manse properties will be relinquished to the Church Housing Fund, apparently regardless of whether or not the Congregation that has the use of or benefit of income from a manse property, or its Church Council that manages the property, agrees to the relinquishment or approves the transfer of responsibility?

A manse property may be occupied by a Minister or a by a lay worker or it may be leased for either a short or long term and the income used for the purposes of the Congregation. The Congregation and its Church Council may agree with the Synod and Presbytery that responsibility for and management and possibly use of the manse will be transferred from the Congregation and its Church Council to a Synod body. However, in my opinion, the Regulations in their present form do not give authority to the Synod to mandate, by by-law, that on a particular date, a transfer will occur. The element of compulsion is a key concern.

Furthermore the apparently mandatory nature and effect of Resolution 38/2006 and the Church Housing Fund By-laws do not conform to the law of the Church because they are inconsistent with the Regulations relating to the Congregation's use of, and the Church Council's management of property, and also because they change the manner in which the councils of the Church and Congregations relate to each other.

I am aware that similar concerns may be raised regarding other decisions that Synods have made over the years. Different considerations may apply to different decisions. In this Ruling, I am only considering the decisions made by the Synod of Western Australia with the agreement of the Presbytery relating to the Church Housing Fund.

I am also aware that Synods and Presbyteries are constantly dealing with missional and financial issues that 'demand' that people and material resources be made available in areas of need and missional opportunity.

The reasons for the decisions relating to the Church Housing Fund in Western Australia are understandable. However, in my opinion, the Synod's decisions based on these reasons are not supported by the Regulations. The Assembly has not yet had the conversations that are needed to enable it to arrive at the conclusion that a Synod (with or without the agreement of Presbyteries) should be given authority to require transfer of responsibility, management and use of a property from a Congregation or its Church Council to the Synod when the Synod concludes that the transfer will assist the mission of the wider Church, either directly or by releasing funds that may be used for that purpose.

Summary of Key Points

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 and that each council will recognise the limits of its own authority and give heed to other councils of the Church.

The Constitution contains provisions relating to the responsibilities of the Congregation and Church Council, the Presbyteries and the Synods. It provides that Church property "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 52).

The Assembly has made a number of specific Regulations relating to property managed or held for the use of Congregations and the authority of Synods and Presbyteries relating to the specific property matters. The Regulations do not permit a Synod, with or without agreement of the Presbytery or Presbyteries, to decide that a manse property must be relinquished by a Congregation or its Church Council. The Regulations do not permit a Synod to transfer management or assume control of a manse property without the consent or approval of the Congregation or its Church Council. The fact that the Synod, or the Synod and Presbytery, consider(s) that the mission or interest of the Church will be better served if the Synod directly manages manses and housing funds, does not give the Synod the power to decide that a manse property must be relinquished by a Congregation or its Church Council.

Further comments

This Ruling expresses my understanding of the present 'law of the Church'. It should not be read as suggesting that Assembly is not able, or ought not, to confer greater (or overriding) authority on the Synod and/or Presbyteries to make decisions such as Resolution 38/2006. Paragraph 17 of the Basis of Union provides guidance for the Church in this regard. In fact, a relevant proposal (Proposal 70) was made to the Eleventh Assembly and has been referred to the Assembly Standing Committee.

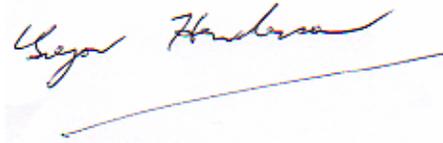
The Assembly meets every three years. If it considers that the Synod and /or the Presbytery should have authority in particular circumstances to deal with property or finance that has been held for use of Congregations regardless of consent of the Congregation or its Church Council it can decide accordingly and make appropriate Regulations. The matter may not necessarily require amendment of the Constitution.

I have briefly referred earlier in this Ruling to the use of the term 'beneficial ownership' (page 5). This terminology appears in Resolution 38/2006 and in the Church Housing Fund By-laws. Although it is a term that has frequently been used in the past, in my opinion it is not helpful or accurate. I encourage the use of terminology such as 'responsibility for management' of a property and a Congregation or other Church body having the 'benefit of the use of, or the income from, the property'.

Ruling

I accordingly rule that, insofar as Resolution 38/2006 of the Synod/Presbytery of Western Australia purports to impose requirements relating to the relinquishment of manses regardless of whether or not a Congregation or its Church Council consents, Resolution 38/2006 does not conform to the Constitution and Regulations of the Church.

In my opinion, the by-laws of the Church Housing Fund that were subsequently approved by the General Council of the Synod of Western Australia and that extend to all properties that may be designated or recognised as manses, also do not conform to the Constitution and Regulations.

A handwritten signature in blue ink, reading "Gregor Henderson", with a long horizontal line extending to the right from the end of the signature.

GREGOR HENDERSON
President
18 March 2008