

## **PRESIDENTIAL RULING No.30**

### **Introduction**

I have been requested by a member of the 13<sup>th</sup> Assembly to make a Presidential Ruling regarding whether a Synod by law that confers certain powers on the Moderator conforms to the Constitution and Regulations of the Church; and whether the actions of the Moderator of that Synod in relying on that by law conform to the Constitution and Regulations of the Church.

The request has been provided in writing, is not hypothetical and was submitted with a statement of facts as required by Regulation 3.6.4.3 (a) (i) and (b) (ii).

The Synod by-law in question says:

### **RIGHTS AND AUTHORITIES OF THE MODERATOR**

6.2.3 The Moderator will have the right and authority to:

- (a) visit any centre or activity of the Church within the Synod and Presbytery;
- (b) attend any meeting of, call a meeting of, and chair any meeting whether or not called by the Moderator of any committee, council, commission or board elected by the Synod or the Presbytery;
- (c) examine the affairs of any committee, council, commission or board elected by the Synod or the Presbytery;
- (d) see that the laws, Regulations, By-Laws and Rules of the Commonwealth of Australia, the State of NNN, the Church, the Synod and the Presbytery are duly observed and abided by;
- (e) interpret the meaning of the By-Laws and Rules and determine any other matter relating to any committee, council, commission or board elected by the Synod or Presbytery on which these By-Laws and Rules are silent; and
- (f) suspend any committee, council, commission or board elected by the Synod or the Presbytery if, in the opinion of the Moderator, the interests of the Church so require and to appoint persons to carry out the functions of the suspended committee, council, commission or board until the Synod or Presbytery reinstates or replaces it.

The action of the Moderator that is the subject of this request for a Presidential Ruling is that the Moderator, acting in reliance on by law 6.2.3(f), purported to suspend the Standing Committee and to appoint an interim committee comprising himself and two other persons to carry out the functions of the suspended Standing Committee.

I have received a statement from the Moderator (Regulation 3.6.4.3 (a) (iii)).

### **The Matters Considered**

I have determined that the matter brought before me relates to an interpretation of the Constitution and Regulations and so is a legitimate subject on which a Presidential Ruling can be delivered (Regulation 3.6.4.3 (a) (ii)). Indeed assertions made by the Moderator in the notice of suspension dated 2 April 2014 and submissions made by him in his letter dated 9 April 2014 relate to his interpretation of particular provisions in the Constitution and Regulations.

In making this ruling it is not necessary that I address each of the questions put to me separately as the consideration of the fundamental issues resolves the matter in relation to each question.

I respond as follows:

1. Clause 36 of the Constitution provides that
  - (a) the Synod shall appoint the Synod Standing Committee;
  - (b) the Standing Committee shall be empowered to act on behalf of the Synod between meetings of the Synod.

Regulations 3.7.4.1(a) and (d) contain similar provisions.

Clause 36 of the Constitution says:

36. The Synod shall appoint from among its members a Standing Committee which shall be empowered to act on behalf of the Synod between meetings of the Synod in respect of any of the responsibilities of the Synod except such as the Synod may determine. The Standing Committee may co-opt additional members of the Synod to act on the Standing Committee. The Standing Committee shall consist of no fewer lay members than ministerial members.

Regulation 3.7.4.1 (a) and (d) say:

**SYNOD STANDING COMMITTEE (See Para 36, Constitution)**

**3.7.4.1 Membership**

- (a) The membership of the Synod Standing Committee shall consist of:
- (i) the Moderator, the ex-Moderator, the Moderator-Elect and the Secretary of the Synod as ex-officio members;
  - (ii) such other ex-officio members as the Synod may determine;
  - (iii) other members of the Synod elected by it to serve until the next ordinary meeting of the Synod;
  - (iv) no more than two persons co-opted by the Standing Committee.

Only members of the Synod are eligible for membership of the Standing Committee.

**Responsibilities**

- (d) The Standing Committee is empowered to act on behalf of the Synod between meetings of the Synod in respect of any of the responsibilities of the Synod except such as the Synod may determine.
2. If By-law 6.2.3(f) purports to apply to the Standing Committee (as well as other committees, etc), it is prima facie inconsistent with Clause 36 of the Constitution and Regulation 3.7.4.1 (a) and (d) because it authorises the Standing Committee which was appointed by the Synod to be suspended before the expiry of its term of office (that is, before the next meeting of the Synod) and it authorises the Moderator to appoint persons to carry out the functions of the suspended Standing Committee.

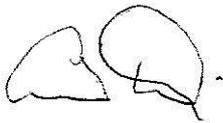
Clause 63 of the Constitution says:

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.
3. I have concluded that, having regard to the relevant provisions of the Constitution and Regulations, by law 6.2.3(f) should not be read as applying to the Standing Committee for the following reasons:
- (a) the by law does not specifically mention the Standing Committee;
  - (b) the power conferred in 6.2.3 (f) is qualified by paragraph (d) which requires the Moderator to see that the laws of the Church are observed;
  - (c)
    - (i) the Uniting Church is governed by a series of inter-related councils (Basis of Union paragraph 15);
    - (ii) the Standing Committee stands in the place of one of those councils, the Synod, between meetings of the Synod;
    - (iii) the by-law cannot or should not be interpreted as giving the Moderator the extraordinary authority to suspend the Standing Committee and to appoint persons of the Moderator's choosing to 'act on behalf of the Synod in respect of any of the responsibilities of the Synod' (Clause 36 of the Constitution) until the Synod 'reinstates or replaces' the Standing Committee;
  - (d) Regulation 3.5.7(b) authorises a Moderator to convene a special meeting of the Synod for special and urgent reasons. The special meeting would appoint a Standing Committee. The Regulations therefore confer a power on the Moderator to initiate a process that will enable the Synod itself to deal with any perceived problem relating to the Standing Committee.

## The Ruling

I rule that

1. Having regard to the relevant provisions of the Constitution and Regulations, by-law 6.2.3(f) cannot be applied by the Moderator in relation to the Synod Standing Committee
2. the Moderator consequently did not have authority under by-law 6.2.3 to suspend the Synod Standing Committee or to appoint persons of the Moderator's choosing to carry out the functions of the Standing Committee; and
3. the purported suspension is invalid and ineffective and the Standing Committee appointed by the Synod continues in office.



Rev Prof Andrew Dutney  
President

16<sup>th</sup> April 2014

*Confirmed by the Assembly Standing Committee, July 2014.*