

# COMMENTS ON THE DIOCESAN PROPERTY USE POLICY AND THE PUBLIC REACTION TO IT

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## **Background**

Over the past three weeks there has been considerable public reaction to the decision of the Synod of the Diocese of Sydney to adopt a *Property Use Policy* to restrict the use of its real estate by, among other things, certain identifiable groups in the community. Diocesan properties in this regard principally include parishes, schools, retirement villages, hospitals, welfare agencies, residential and commercial premises.

The original policy was widely scoped and included a draft of activities that are already illegal on church property; but it also sought to include banning use of church property by or for the following:

- non-Christian religions,
- Christian denominations whose beliefs or practices differ from the Sydney Diocesan principles of faith,
- Anything based on a non-Christian spirituality such as yoga classes, meditation involving chanting, and traditional Aboriginal smoking ceremonies,
- Advocacy and/or medical referrals for abortions,
- Undertaking of stem cell research involving the destruction of embryos,
- Advocacy for euthanasia,
- Solemnisation, blessing or celebration of same-sex marriages, and
- Advocacy for expressions of human sexuality contrary to diocesan policy or stated beliefs.

Before the policy was debated, however, it was heavily amended out-of-session and newly presented to the synod. The amended policy had the effect of allowing debate of contentious issues to be held on church property, and making the policy not applicable to retirement villages, residential leases and commercial leases because the original policy would have been in breach of the law had these remained. Nevertheless, many of the activities outlined above continue to be in the policy.

A letter from the Archbishop to diocesan heads of schools and their subsequent letter to the school communities created a reaction, especially when it was coupled to the current exemptions from the Anti-discrimination Act that religious bodies enjoy, and that allow schools the possibility of excluding LGBTI students and staff.

The fact that such a flawed policy was presented to the Synod by the Standing Committee in the first place is of concern. In the light of this and the subsequent public debate both in the schools and beyond, I wrote to the Archbishop expressing my views about the situation and how it has been handled. The following is part of my commentary to the Archbishop and is provided for your information.

## Comments

Unfortunately, synods in general appear have become a bit of an embarrassment to the church in recent years. Rather than sticking to the good governance of the church, there seems to have been a temptation to grandstand, parade religious piety, and a desire to enter the political domain in a fairly amateurish way.

Given that active participation in the Anglican Church in Sydney is currently only about 2% of population, we tend to make a big deal of the importance of what we are doing in synod, especially when we seek to make public policy statements. It sometimes backfires, and we end up looking foolish. I think that this is what has happened with the implementation of the *Property Use Policy*. From the outset, there were several problems with the original proposal, notably:

1. Most of it was unnecessary because it claimed privileges that are already available to the churches under government legislation,
2. Parts of it concerning advocacy were regressive because they sought to restrict free speech and, by extension, restrain freedom of religion,
3. It supported diocesanism over corporatism in the Anglican Church of Australia, having the potential to lead to greater fragmentation and dysfunction in the church especially by making specific claims about what is Anglican doctrine that is unstated generally,
4. Part of it was illegal, in that it sought to give powers to the Diocese that were in conflict with government statutes, and
5. It was an act of identity politics that was unduly legalistic and lacking in grace toward sections of the population that deserve our help rather than our rejection and exclusion.

The out-of-session amendments went some way to address these problems, but it remains that the intent of the original policy was in the public domain and much of the damage had been done. What it achieved was to bring the church into disrepute with average Australians and therefore compound its marginalisation in society. Indeed, it also seems to have invited reactions from those who might seek to harm us by seeking legislation to remove the privileges we currently enjoy.

The churches are held in suspicion by many Australians because of the child abuse scandals, the mismanagement and poor governance of assets and accompanying financial losses both as a result of the GFC and other economic follies, and the perceived discrimination against minorities and the marginalised. This is a time when we should be showing repentance and humility rather than drawing attention to ourselves in a way that invites disparagement and condemnation.

The *Property Use Policy* was exaggerated in some of its claims. This was especially the case concerning the banning of same-sex marriages on church property because, under the Marriage Act, churches (and clergy in particular) cannot be compelled to marry anyone and, moreover, there is no authorised liturgy to allow either the conduct or blessing of same-sex marriages in this Diocese or in the wider Australian Church of Australia. Likewise, the church already has many other freedoms and privileges under the law, including not being obligated to allow the sale of pornography, the operation of a brothel, the sale of tobacco or narcotics, the production of liquor, or the provision of gambling. The policy was somewhat conceited in its proclamation of the banning of these things.

The Policy was also perceived as draconian in its seeking to single out people who are to be banned from the use of church property. The message it gave was that we don't want these sorts of people on our land and had the effect of identifying groups of people including those of other religions (such as Jews, Hindus and Muslims), other Christians with whom we disagree (such as the Roman Catholic and Uniting Churches), people of non-heterosexual sexualities, and indigenous people, as being unwelcome in the Anglican Church. Even if not intended, the perception of such a position does not serve the mission of the church well and tends to identify us as an exclusive religious club rather than a group of people following Jesus.

Another big problem with the original policy was its ban on many advocacy activities. It was partly a ban on free-speech on church trust property, and it was partly an interference with the legitimate activities of property tenants (such as barristers) whose job is to conduct advocacy for any party that seeks their services. This is likewise the case with medical professionals who are bound to help all people in need, regardless of their circumstances. The amended policy did try to address this problem.

Advocacy for illegal things is, of course, illegal but many of the things listed in the policy are legitimate. Several barristers in my domain suggested to me that if the church tried to prevent them from the valid pursuit of their profession that it would be interfering in the proper operation of the courts – an indictable offence!

The reaction to the policy, through the Archbishop's letter to the heads of schools and their subsequent actions, has been widely reported. As commentators said, "if a law is not needed because it will not be used, then why is it necessary?" It might also be noted that if teachers don't conform to a school's code of conduct and support its ethos, then this indicates more a leadership problem than a legal one.

This finally brings me to the Standing Committee that brought forward the report, the policy and the ordinance. It would seem that the Committee did not understand the scope of its proposed policy and its consequences. It is not as though the Committee is without either lawyers or political operatives, so why did it become such a mess? I suspect, in part, it is because there is such a disconnect between our church and the wider community that the conversation has become somewhat strained, and that the interlocutors are speaking 'past each other' with megaphones rather than with respectful engagement. It may also be the product of groupthink.

It also strikes me that much of this property policy was borne out of fear. This seems to become apparent in the policy's background notes, which are shaped in terms of addressing 'threats' to the church. Moreover, the policy sought to use law (a blunt instrument) to address dynamic cultural issues (the nature of the church), which has every potential of leading to unintended consequences – such as has been seen in the community reaction. Reflecting on my Army experience, I note that there was a tendency to avoid using law to deal with cultural matters, and instead, positive leadership, narratives, value statements, and codes of conduct were employed to manage behaviour and achieve change.

On the cultural side, it seems that the Diocese of Sydney is far too keen on using legislation as a means to control the institution and its activities. It manifests itself in the synod agenda and the focus of the Standing Committee. When used as a means of creating identity, the law is stultifying because it leads to the worst kind of identity politics that tends to restrict free speech and thought, coerce people into conformity, and indicates a desire to gain power by dividing people between those who are 'in' and those who are 'out'. It says that if you are 'in' (and part of the tribe) you are entitled to our attention and support but if you are 'out' you can be disregarded.

We have a lot of work to do if we are to regain the trust of the community. I think we need to become less risk adverse and more creative and diverse if we are to adapt to the changing world around us. The freedom of religion debate, which has been promoted by some of the churches, has a potential to lead to a restriction of the desired freedoms if church institutions are not wiser in their approach to both ecclesiastical and public policy. It would seem that we are dealing too much in law and not enough in grace.