

Task Group on the Preamble to the Constitution

INTRODUCTION

As Christians we tell our story and remember our history because (i) it speaks of our identity, of who we understand ourselves to be, and (ii) we claim that in that story and history we see signs of the hand or providence or guidance of God in our lives. We are trying to understand how our life is not simply a human biography, but is part of God's desire and intention for the world.

Constitutions speak about who a community understands itself to be, why it exists, what it wants to do, how people join the community, who can exercise authority in regard to what, and what provides the basis for the community's life. Preambles, though, speak of how people journeyed to the point of being this sort of community.

The present Preamble to the Constitution of the Uniting Church is a perfect example of this sort of statement. It begins with the claim that the three churches entered union because "they have been called by God". It speaks of the way the churches sought the guidance of the Holy Spirit, and how responsibility for government rests with those upon whom God has laid gifts and tasks. It mentions how the church is shaped by its response to the Gospel, and how it seeks to be directed to the service of God and people. In short, it is a statement about the way the church sees itself within the providence of God.

The Preamble is an affirmation and reminder that the Uniting Church confesses faith in God who does not abandon creation, does not leave us to our own devices, and has not set things in train and left them to run as they will. While we struggle with the challenge of evil and suffering, yet we still affirm that God upholds and guides the creation towards God's chosen end – to gather all things in heaven and earth into Christ (Eph. 1: 10).

The 2006 Assembly referred a number of matters to the Assembly Standing Committee (ASC) which had to do with the Constitution and Regulations. A Task Group explored these issues and brought a number of recommendations to the ASC, including the need for a review of the Constitution.

A new Task Group was appointed to consider the Constitution (including the Preamble). That Task Group was aware of concerns within the Uniting Aboriginal and Islander Christian Congress (UAICC) about the Constitution and the way it described and defined the way Congress worked within the Uniting Church. There were a number of suggestions about the way a new Preamble might respond to some of these concerns, including the question of whether a Preamble could be seen as important to the interpretation of the Constitution.

It has become clear in the developing relationship between the UAICC and other parts of the Uniting Church that the story of God's providential care for the Church is too narrow. It omits part of the story. The proposed new Preamble seeks to offer a story that speaks of God's providence in broader ways.

This preamble has emerged over a lengthy period of conversation between the UAICC, a Task Group appointed by the ASC, and the Synod General Secretaries. It is work that has sought to take seriously the comment of the Basis of Union that the aim of the Church's law "is to confess God's will for the life of the Church; but since law is received by human beings and framed by them, it is always subject to revision in order that it may better serve the Gospel. The Uniting Church will keep its law under constant review so that its life may increasingly be directed to the service of God and humanity, and its worship to a true and faithful setting forth of, and response to, the Gospel of Christ" (Paragraph 17).

Law is central to the way in which Indigenous peoples understand life. It is thus important to the relationships which exist within the UCA that the relationship between Indigenous and other members of the Church is recognized and honoured within the law of the Church

A number of responses suggested that some people in the church would be happier if we retained the present Preamble and "included Indigenous people in the preamble" in a way that was shorter than the proposal. However, we need to be quite clear that this Preamble is not simply concerned with "including Indigenous people". This is not about adding an extra note to name someone who has not been named previously. This Preamble is about the way the Uniting Church understands itself as Church in this country, and the relationship it must necessarily have with Indigenous people (inside and outside the church). It is not enough to add to a past telling of our story and identity, but we must – in the light of a growing awareness of our place in this country – tell the story differently and understand ourselves differently.

As well as the Preamble this proposal also suggests:

- Two clauses which act as interpretative clauses which indicate the way in which the Preamble and the Covenant relationship impacts on the way the church understands the Constitution and Regulations.
- Three new definitions: First Peoples, Second Peoples, and the Covenant relationship.
- A new head heading for Division 4, and a new clause under that Division.

In the material sent to synods and presbyteries there was a suggestion for a change to the definition of the UAICC which would have added 'First Peoples' to the definition, and would have changed the responsibility of UAICC. We have chosen to cover the issue of First Peoples in a

different way, and believe the issue of Congress's responsibilities should be pursued after they have finished the review of their Constitution.

THE SHAPE OF THE NEW PREAMBLE

1. The opening three paragraphs tell something of the story of union and the self-understanding of the church – including its distinctive understanding of governance - while recognising that that self-understanding is expressed much more fully in the Basis of Union. This is the story that speaks of the providence of God towards the Uniting Church.
2. The first three numbered paragraphs speak of God's providential activity among Indigenous peoples in Australia. It affirms that God – the same God revealed in Jesus Christ - cared for this land and peoples before colonisation. They also speak of Indigenous peoples' knowledge of God, and their identity as children of God.
3. Numbered paragraphs 4-6 speak very briefly of the history that unfolded because the nation and church failed to recognise and properly acknowledge God's providence and revelation in this land.
4. Paragraphs 7-8 speak of the reclaiming by Indigenous peoples of their identity and their belief that God had always been part of their life. One way this was done was through the formation of the UAICC.
5. Paragraphs 9-10 speak of new attempts to discover how together we can speak about God's providential care in the face of a broken past. How do we find the providence of God in the story of covenant and a new church? These paragraphs commit us to try.
6. The final (un-numbered) paragraphs commit the church to renewal and recognises the Constitution.

RESPONSES TO EARLIER DRAFTS

Earlier drafts of this Preamble were discussed by the ASC, and in conversations with Congress. An earlier draft was sent to presbyteries and synod for comment. There was significant feedback from 3 Synods, 7 presbyteries, a social justice group, and 5 individuals.

The Task Group read all responses very carefully, and as a result has made a number of changes both to language and to content. The Preamble has arisen from significant consultation, and the decision was made to accept changes where (i) they raised a new issue which the Task Group believed was important and (ii) the words offered provide a more helpful way forward than the task Group had been able to achieve.

Many of the responses raised important issues about the issues being discussed and the theological foundations assumed or made explicit by the Preamble. The Task Group did not always agree with the submissions made to it, and in the next section seeks to show why it believes that its position is reasonable.

The submissions, and the response of the Task Group are arranged according to the sections suggested above. One of the important issues, dealt with under section two, is that of providence and revelation within the Indigenous community, and how this relates to the Reformed claims about revelation in Christ and Scripture.

General comments

There were a number of comments about whether it was appropriate to place material of this kind in a Preamble. Those comments were concerned for:

- i. The view that it is not appropriate to single out one part of our history, over against all other tragic or difficult parts of our history.
- ii. The belief that Constitutions are legal documents, with formal language, and filled with principle and definition, whereas the preamble is in the language of narrative, imagination and heart.
- iii. A view that by inclusion of sad and sinful, inter-communal matters of race, culture and religion, we are enshrining and highlighting those very things which we seek to overcome as we build a new future.
- iv. The view that rather than express these things in the Constitution as a basis for the powers given to Congress, we should allow the Assembly to recognise these by resolution, with opportunity for review and renewal
- v. The question of how sole loyalty to Christ as the living Head of the Church (para 3 of Basis of Union), and unity of faith and life in Christ that transcends cultural and economic, national and racial boundaries (para 2) relate to this recognition of diversity and place that is built on race or culture?
 - i. *It was not appropriate to single out one part of our history, over against all other tragic or difficult parts of our history.*

It seems to the Task Group that this is a central issue. Our response is that the identity of a community, including the church, is forged out of the inter-relationship of three things: relationships and social location, the habits and practices of the person or community, and narrative (what we would call theology/ ecclesiology). The primary relationship which establishes the church is clearly with Jesus Christ, who said that where two or three are gathered he is present. But who we think Jesus is also determines our other relationships and social location. Scripture makes it clear that Jesus is on the edge of community among the least (see Matthew 25, for example). So, a significant issue for the identity of the Uniting Church, as a particular expression of the church, is what relationships and

social location reflects who/where Jesus is in this country.

The primary shaping reality in Australia's modern history is invasion and dispossession. This is not just a difficult or tragic aspect of our history, and is not even just one aspect of our collective history, but the event which has shaped the last 200 years of relationships in this country. So, the claim of the preamble is that we cannot be the church in Australia, we cannot honour and respond to the presence of Christ that makes us church, apart from the way we place ourselves where Christ is – with Indigenous peoples as dispossessed people.

ii. *Constitutions are legal documents, with formal language, and filled with principle and definition, whereas the preamble is in the language of narrative, imagination and heart.*

There are three things to say:

- This is one view of Constitutions, but not one the Task Group would agree with and not one that we believe is in line with more recent views about Constitutions.
- This is a Preamble, and is a statement about our identity not just as part of the whole church, but as a particular community that is the Uniting Church. The present Preamble speaks of our identity, but it does so in terms of the history of church union. This Preamble seeks to state that identity in terms not of ecclesial history but the history of this nation in which the UCA sits. Identity cannot always be stated in formal and legal form, but often requires narrative. It is precisely in a preamble that we should seek to give contextual expression to the theological view of the church found in the Basis of Union. The Basis is our boundary document, the one that sets the edges for our conversation, reminding us of essentials, but each generation needs to give expression to a contextual and lived reality, and that is what the Preamble does.
- There are important things being said in the present Preamble about who we understand ourselves to be as church, and how our government is exercised. This is why the task group suggested new opening paragraphs for the Constitution that would spell out a bit more about how we see ourselves as church, and what are the core things about our life. Unfortunately – from my point of view – those paragraphs will not reach this Assembly but will be part of a further consideration of the Constitution.

iii. *By inclusion of sad and sinful, inter-communal matters of race, culture and religion, we are enshrining and highlighting those very things which we seek to overcome as we build a new future.*

The church has always understood the need for lament and confession; lament as a cry to God in

the face of suffering, and confession as recognition of the broken and sinful parts of our life and relationships. Confession is about which stories we own, which understanding of life we believe is true. Confession acknowledges that those who speak about pain and suffering and abuse are telling a right story, one that cannot be ignored. We do not build new futures by ignoring the past. We build new futures when we can own the past and what it still does to the present, and on that basis forge a new present.

This document has within it the character – at least in part – of lament and confession that sits alongside affirmation, and expectations about the future. We think that is a good balance.

Some responses have suggested that the view of history is too tragic and negative, yet it seems to us that this once again is the view of dominant peoples. The history we have tried to reflect in the Preamble is the history that Indigenous people have experienced, and is a perspective we need to hear very carefully and not simply dismiss as too tragic. It is a confessional document, one that is aware of a difficult past.

iv. *Rather than express these things in the Constitution as a basis for the powers given to Congress, we should allow the Assembly to recognize these by resolution, with opportunity for review and renewal.*

Here we run into issues about relationships, history and trust. The Constitution is the document that controls regulations and decisions of the Assembly. The Constitution gives a framework, and is much harder to alter than a decision of Assembly.

The issue is how the Constitution will recognise that we are diverse peoples, and how the Constitution will provide space and shape for the relationship which exists between us. We are many people who find their unity in Christ. Our unity is not racial or cultural, but is found in Christ who does not remove difference but makes it irrelevant to membership of the kingdom (but not irrelevant to our human identity as people made in God's image).

The danger with the language of unity is that we mean sameness, and the sameness is always that of the majority people or the people with power. Majority people want unity because we want everyone to be like us. Minority peoples want diversity, because they want to survive as a people.

This is the delicate balance in the Preamble – recognition of diversity, and commitment to a relationship that seeks to give expression to the unity (not uniformity) we find in Christ.

v. *How does sole loyalty to Christ as the living Head of the Church (para 3 of Basis of Union), and unity of faith and life in Christ that transcends cultural and economic, national and racial boundaries (para 2) relate to this recognition of diversity and place that is built on race or culture?*

The Basis of Union gives us a great account of the church, a theological description. But the question is what that means in fact for the life of the church. It means that our loyalty cannot be split between Christ and the claims of government or culture. It means that our unity in Christ must be inclusive of all peoples and cultures, and not based on assumption that one community alone is the church - which is why the section in paragraph 2 goes on to say "and to this end the Uniting Church commits itself to seek special relationships with the churches in Asia and the Pacific." How can we commit ourselves to those relationships and not be open to seek special relationships with the Indigenous Christian community within our own church?

There is also in this concern for Christ a concern that the new preamble may be suggesting that there is revelation apart from Christ and Scripture, and/or that knowledge of God is universal.

The Preamble is not suggesting a natural theology, but is suggesting – following Barth's later work¹ – that the Bible and Church is a much smaller sphere of life than the whole world, and that God can and does speak and is heard outside the church. That is, the issue is not whether people can know God themselves – which our tradition clearly opposes – but whether God reveals Godself in a wider world and peoples than the church. It is this that is affirmed in the Preamble.

The issue was also raised as to whether the document gave adequate recognition to the particularity of Christ, or to Christ who affirms and judges all cultures, or to Christ the reconciler, or to language about Trinity.

The Task Group considered this claim, and has made a number of changes to make the Church's Trinitarian faith and the particularity of Christ much clearer in the document.

vi. *Church Union and our self-understanding*

There were few issues in this section, except the concern that it was a far less adequate expression of our journey into Union than the present Preamble, and left out significant material – both history and polity – that are in the original Preamble.

The Task Group was of the opinion that the language of the present Preamble is outdated, and that it is not necessary to protect our history in a Preamble to the Constitution. The proposed Preamble retains some parts of the present Preamble, but in different language.

At the same time the Task Group has recognised that the issue of Governance is important and has put that section back into the new Preamble.

¹ Karl Barth, *Church Dogmatics*, Vol IV, Part Three, First half. (Edinburgh: T&T Clark, 1962), pp. 114-135.

THE PREAMBLE AND INTERPRETATION OF THE CONSTITUTION

An issue that has been discussed fairly widely within the task group, the ASC and the Legal Reference Committee (LRC) is whether the Preamble could be seen as necessary to the interpretation of the Constitution. That is, could we have a clause in the Constitution that says something like "this Constitution cannot be interpreted in ways which would contradict or run counter to the covenant relationship which exists between the UAICC and the rest of the church"?

Preambles are just that: preambles; introductory comments that introduce history and other matters. They are frequently less legal in tone, and more a narrative about the community's life. They generally have no impact on the way the Constitution is interpreted unless that Constitution quite specifically indicates this role.

As the LRC said in a report to the ASC in July 2008: A "preamble", by its nature, is to be found at the beginning of a document such as a Constitution or an Act of Parliament, and sits "outside" the operative provisions of the relevant document. In the context of an Act of Parliament, it may be intended to be preliminary in nature, setting out the reasons that have given rise to the need for the Act and/or the object or purpose of the Act...²

The issue of whether the Preamble could be seen as one of the things which shapes any interpretation of the Constitution has arisen because the covenant relationship is a constantly evolving one and there will be times when the Constitution and Regulations will not be able to be interpreted in ways that reflect that relationship. Yes, the Constitution and Regulations can be changed, but that takes time, and many issues arise because of the changing relationship and need to be sorted out fairly quickly.

In this regard the LRC paper says:

It is generally accepted that a preamble can be used to resolve any ambiguities in the body of the document but cannot be used to restrict or extend the otherwise plain meaning of the words within the document. Further, the point should be made that still less force can be given to a preamble in an attempt to effect the meaning of the substantive document, when the meaning of the preamble is itself unclear.

In my view, were the Assembly to enact a further preamble of some kind, then it would also need to decide the intention in doing so, that is, is it in fact intended as a guiding set of principles, in effect a "filter" through which the rest of the Constitution should be read, or is it intended merely to be an introductory

² Warwick van Eade, *The Role of Preambles Interpretation of Documents*, Document 10A for ASC July 25-27 2008.

statement, symbolic with no particular force or interpretational purpose. That intention should be stated clearly in the preamble itself which statement would in turn be an interpretative aid.³

The Task Group has adopted the position that the role of the Preamble needs to be stated in the Constitution itself, for it is clearly the binding document and needs to determine what impact the Preamble can have on interpretation. The proposals suggest the addition of a new clause 2A which is concerned for the interpretation of the Constitution in the light of this Preamble.

One issue, raised by the LRC in its response to an early draft of the Preamble is how the UAICC would express its mind about the way it understood the impact of the covenant and/or Preamble on interpretation of the Constitution or the applicability of the Regulations. There is a proposal which asks the ASC, in consultation with the LRC, to adopt a Regulation to indicate how this would occur.

CONCLUSION

The Task Group recognises that this is a challenging suggestion that raises difficult personal and community issues about our history, our present relationships, the way we understand God's plans and purposes among us. It is not our intention to cause divisions, but to invite people to an open, honest, but respectful conversation about our life as church. We believe that these are important issues of identity, polity, and theology.

Rev Dr Chris Budden
Convenor
Constitution Task Group

The proposals arising from this document are included in section C of the Assembly papers.

³ *ibid*