

# Church Ministry (Confessions) Ordinance 1993 Repeal Ordinance 1997

## Explanatory Statement

### Introduction

1. This bill is promoted by 6 members of the Synod and seeks to repeal the Church Ministry (Confessions) Ordinance 1993, the text of which is on pages 608 and 609 of the 1994 Year Book. Without supporting the bill, the Standing Committee agreed that the bill be printed for the Synod.

2. The first reading of the bill took place at the 1st session of the 44th Synod in October 1996. The 2nd reading was referred to the 2nd session of the 44th Synod.

### Church Ministry (Confessions) Ordinance 1993

3. Under the Church Ministry (Confessions) Ordinance 1993 the Synod -

- (a) adopted the General Synod Canon concerning Confessions 1989 (the "Canon"); and
- (b) made section 2 of the Canon a schedule to the Church Ministry Ordinance 1993.

4. The adoption of the Canon gave effect to its provisions in Sydney.

5. Section 2 of the Canon provides -

"If any person confess his or her secret and hidden sins to an ordained minister for the unburdening of conscience and to receive spiritual consolation and ease of mind, such minister shall not at any time reveal or make known any crime or offence or sin so confessed and committed to trust and secrecy by that person without the consent of that person."

6. Under section 3 of the Canon all law concerning the making of confessions, including the proviso to Canon 113 of the Canons of 1603 in so far as it had effect, ceased to have operation or effect in the Diocese. Canon 113 was in the following terms -

"CXIII. Ministers may present.

Because it often cometh to pass, that the churchwardens, side-men, quest-men, and such other persons of the laity, as are to take care for the suppressing of sin and wickedness in their several parishes, as much as in them lieth, by admonition, reprehension, and denunciation to their ordinaries, do forbear to discharge their duties therein, either through fear of their superiors, or through negligence, more than were fit, the licentiousness of these times considered; we ordain, That hereafter every parson and vicar, or, in the lawful absence of any parson or vicar, then their curates and substitutes may join in every presentment with the said churchwardens, side-men, and the rest above mentioned, at the times hereafter limited, if they, the said churchwardens and the rest, will present such enormities as are apparent in the parish; or if they will not, then every such parson and vicar, or, in their absence, as aforesaid, their curates may themselves present to their ordinaries at such times, and when else they think it meet, all such crimes as they have in charge, or otherwise, as by them (being the persons that should have the chief care for the suppressing of sin and impiety in their parishes) shall be thought to require due reformation. Provided always, That if any man confess his secret and hidden sins to the minister, for the unburdening of his conscience, and to receive spiritual consolation and ease of mind from him; we do not any way bind the said minister by this our Constitution, but do straitly charge and admonish him, that he do not at any time reveal and make known to any person whatsoever any crime or offence so committed to his trust and secrecy, (except they be such crimes as by the laws of this realm his own life may be called into question for concealing the same,) under pain of irregularity." (italics added).

### Purpose of the Bill

7. By repealing the Church Ministry (Confessions) Ordinance 1993, it is intended that the Canon (in particular section 2) will cease to have effect in Sydney.

### Consequential Matters

8. The repeal of the Church Ministry (Confessions) Ordinance 1993 is likely to revive the law which that Ordinance repealed because of a common law rule of statutory interpretation which, by analogy, applies where the Synod excludes the operation of a General Synod canon. Accordingly, all law concerning the

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making of confessions, including the proviso to Canon 113 of the Canons of 1603 in so far as it had effect, will again apply in Sydney from the date of repeal of the Church Ministry (Confessions) Ordinance 1993.

9. It is unlikely that the repeal of the Church Ministry (Confessions) Ordinance 1993 will prevent members of the clergy in Sydney from claiming the privilege provided by section 127(1) of the Evidence Act 1995. Under that section a person who is or was a member of the clergy of any church or religious denomination is entitled to refuse to divulge that a "religious confession" was made, or the contents of a "religious confession" made, to the person when a member of the clergy. A "religious confession" is a confession made by a person to a member of the clergy in the member's professional capacity according to the ritual of the church or religious denomination concerned. The privilege under section 127(1) applies whenever a religious confession is made and not only where the member of the clergy is subject to an obligation of confidence.

For and on behalf of the Standing Committee

MARK PAYNE  
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20 August 1997