

General Synod 2004 Legislation

(A report from the Standing Committee.)

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Introduction

1. Under the constitution (“Constitution”) of the Anglican Church of Australia (set out in the Schedule to the Anglican Church of Australia Constitution Act 1961 - see pages 5 to 39 inclusive of *Acts, Ordinances & Regulations (2005 Edition)*), the General Synod has power to make canons for the order and good government of the church. The General Synod also has power, by canon, to amend the Constitution.

2. Not all canons come into effect when they are passed. For example, where a canon affects the order and good government of the Church in a diocese then, under the Constitution, the canon does not come into effect in that diocese unless the diocese, by ordinance, *adopts* the canon. Further, a canon to amend the Constitution only comes into effect if the requisite number of dioceses *assent* to the canon. In the case of certain provisions of the Constitution the canon only comes into effect if it receives *assent* from all dioceses.

3. Where a proposed canon affects the ritual, ceremonial or discipline of the Church the usual procedure is that the canon is only passed provisionally. It then becomes known as a provisional canon. Under the Constitution, a provisional canon is referred to each diocese for *assent* or *dissent*. If all dioceses *assent* to the provisional canon then it becomes a canon. If a diocese *dissents*, the provisional canon must be reconsidered at a future session of General Synod. If at that future session the provisional canon is passed by a 2/3 majority of the members of each house of General Synod, it becomes a canon. If passed, but not by a 2/3 majority, it is again referred to diocesan synods for assent or dissent. In any event if the provisional canon becomes a canon, the canon does not have effect in a diocese until the diocese by ordinance *adopts* that canon.

Canons passed by the General Synod in 2004

4. In 2004 the General Synod passed the following canons -
- Canon to Amend the Primate Canon 2004*
 - Canon to repeal the Anglican Superannuation Australia Canon 1995 (1 1998)*
 - Constitution Alteration (Chapter IX) Canon 2004*
 - Constitution Amendment (Relations with Other Churches) Canon 2004*
 - Corporate Trustees Canon 1962 Amendment Canon 2004*
 - Holy Orders, Relinquishment and Deposition Canon 2004*
 - NSW Provincial Constitution Ratification Canon 2004*
 - National Aboriginal and Torres Strait Islander Anglican Council Canon Amendment Canon 2004*
 - National Register Canon 2004*
 - Special Tribunal Canon 2004*
 - Strategic Issues, Commissions, Task Forces and Networks Canon Amendment Canon 2004*
 - Strategic Issues, Commissions, Task Forces and Networks Canon (Amendment) Canon 2004*
 - The Australian College of Theology (Amendment) Canon 2004*
5. The General Synod also passed the following as provisional canons –
- Canon Concerning Holy Orders 2004*
 - Episcopal Standards Canon 2004*
 - Holy Orders (Reception into Ministry) Canon 2004*
 - Restraint on Certain Consecrations Canon 2004*

Canons in force

6. The *NSW Provincial Constitution Ratification Canon 2004* has taken effect as a canon ratifying amendments to the constitution of the NSW province under section 41 of the Constitution as consent to the amendments has already been given by all the dioceses of the province.
7. There are a number of other canons which have taken effect because they do not affect the order and good government of the Church in a diocese. These canons are -
- Canon to Amend the Primate Canon 2004*
 - Canon to repeal the Anglican Superannuation Australia Canon 1995 (- 1998)*
 - Corporate Trustees Canon 1962 Amendment Canon 2004*
 - National Aboriginal and Torres Strait Islander Anglican Council Canon Amendment Canon 2004*

Strategic Issues, Commissions, Task Forces and Networks Canon Amendment Canon 2004
Strategic Issues, Commissions, Task Forces and Networks Canon (Amendment) Canon 2004
The Australian College of Theology (Amendment) Canon 2004

Canons for adoption by our Synod

8. Each of the following canons affect the order and good government of the Church in a diocese and must be adopted by our Synod before they have effect in our Diocese -

Holy Orders, Relinquishment and Deposition Canon 2004
National Register Canon 2004

9. The Standing Committee recommends that the *Holy Orders, Relinquishment and Deposition Canon 2004* be adopted and that the Holy Orders Relinquishment Ordinance 1994 be repealed: see the separate explanatory statement and bill.

10. The *National Register Canon 2004* authorises the setting up and maintenance of national registers for the recording of certain information about clergy and lay persons.

11. The National Register of clergy is to contain particulars of all clergy ordained or licensed in Australia and notations of any investigations made by a Professional Standards Committee, and/or matters referred to a Professional Standards Board, a diocesan tribunal or the Special Tribunal. Particulars of any determination or recommendations of such a body and particulars of any relinquishment of or deposition from Holy Orders are also to be included in the National Register.

12. The National Register of lay persons is to contain particulars of only those persons who have been the subject of investigation by a Professional Standards Committee, including details of employment, when the person became subject to investigation and/or referred to a Professional Standards Board and the determination or recommendation of such a body.

13. Access to the Registers is restricted to a Diocesan Bishop, a Director of Professional Standards and such other persons as may be determined by the Standing Committee of General Synod.

14. The Standing Committee of the General Synod has advised each diocese to formally adopt the National Register Canon 2004 on the basis that the Canon could be said to affect the good order and governance of the Church within individual dioceses. The Standing Committee has nonetheless made a declaration under section 30(c) of the Constitution that the *National Register Canon 2004* affects the order and good government of the Church within our Diocese. The Standing Committee has notified the President of the General Synod of

such declaration. The Standing Committee will bring recommendations to the Synod about this canon in due course.

Canons for assent by our Synod

15. Each of the following canons amends the Constitution and do not come into effect until at least $\frac{3}{4}$ of the diocesan synods, including all of the metropolitan sees, have assented to the canon by ordinance with all such assents to be in force at the same time –

Constitution Alteration (Chapter IX) Canon 2004

*Constitution Amendment (Relations with Other Churches)
Canon 2004*

16. The Standing Committee recommends that assent be given to the *Constitution Amendment (Relations with Other Churches) Canon 2004*: see the separate explanatory statement and bill.

17. The Standing Committee recommends that assent not be given to the *Constitution Alteration (Chapter IX) Canon 2004*. A separate report about this canon is set out in Annexure 1 to this report.

Provisional Canons

18. Each of the following canons have been passed by the General Synod as provisional canons and must be assented to by the Synod of each diocese before they will come into effect –

Canon Concerning Holy Orders 2004

Episcopal Standards Canon 2004

Holy Orders (Reception into Ministry) Canon 2004

Restraint on Certain Consecrations Canon 2004

19. The Standing Committee recommends that the Synod not assent to the *Holy Orders (Reception into Ministry) Canon 2004*. A separate report about this provisional canon is set out in Annexure 2 to this report.

20. The *Canon Concerning Holy Orders 2004* replaces the Canons of 1603 that deal with ordained ministry (canons 31 to 37) and puts in place minimum requirements for ordination as a deacon or priest or consecration as a bishop. The Standing Committee has sought comments about the canon from the bishops and Principal of Moore College and will make recommendations about the canon once these comments are received.

21. The *Restraint on Certain Consecrations Canon 2004* provides that a person who is a bishop, priest or deacon in the Anglican Church of Australia must not be consecrated bishop in this church or in another church or religion otherwise than in accordance with the Constitution and any relevant canon or relevant ordinance. It also provides that a bishop of the Anglican Church of Australia must not participate in a consecration that is not in accordance with the

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Constitution or any relevant canon or ordinance. The Standing Committee recommends that the Synod take no action with respect to this canon in the foreseeable future.

22. The *Episcopal Standards Canon 2004* sets up a procedure for dealing with matters of sexual abuse and any matters of alleged misconduct or omission by a member of the House of Bishops. The Standing Committee is still considering this canon and will bring its recommendations in due course.

Special Tribunal Canon 2004

23. The purpose of the Canon is to make provision for the handling of complaints against bishops and for the operation of the Special Tribunal.

24. The Canon establishes the Episcopal Complaints Commission which has the following functions –

- to receive complaints against bishops and investigate them; and
- to deal with matters that ought not to proceed to the Special Tribunal because they are trivial, stale or without adequate foundation, and to do so in a just, efficient and expeditious manner; and
- to provide a mechanism for the possibility of mediation and reconciliation in appropriate cases; and
- to ensure that a proper case exists before matters go forward to the Special Tribunal; and
- to prosecute matters before the Special Tribunal and to be the only body available to do so.

25. The Canon should be read in conjunction with the now amended sections 56, 60, 61 and 61A of the Constitution. The canon is linked to the Episcopal Standards Canon 2004 in that the Commission carries out functions under that canon as well, and the protocol adopted under that canon may be used for the purposes of this canon.

26. The Standing Committee has declared under section 30(c) of the Constitution that the *Special Tribunal Canon 2004* affects the order and good government of the Church within our Diocese. The Standing Committee has notified the President of the General Synod of such declaration. As at the date of printing no advice has been received that the General Synod Standing Committee agrees with the opinion expressed in the declaration.

Summary of recommendations

27. The Standing Committee recommends that the *Holy Orders, Relinquishment and Deposition Canon 2004* be adopted and that the Holy Orders Relinquishment Ordinance 1994 be repealed.

28. The Standing Committee recommends that assent be given to the *Constitution Amendment (Relations with Other Churches) Canon 2004*.

29. The Standing Committee recommends that assent not be given to the *Constitution Alteration (Chapter IX) Canon 2004*.

30. The Standing Committee recommends that the Synod not assent to the *Holy Orders (Reception into Ministry) Canon 2004*.

31. The Standing Committee recommends that the Synod take no further action with respect to the *Restraint on Certain Consecrations Canon 2004* in the foreseeable future.

For and on behalf of the Standing Committee.

STEVE LUCAS

Legal Officer

17 August 2005

Annexure 1

Constitution Alteration (Chapter IX) Canon 2004

1. The canon is printed in the schedule which follows this report.

What the canon does

2. The Constitution Alteration (Chapter IX) Canon 2004 inserts a new section 63A into the Constitution. Its main purposes are –

- (a) to remove doubts about the validity and powers of Professional Standards Boards established by ordinance of a diocese and the Episcopal Standards Board proposed to be established under the Episcopal Standards Canon 2004, and
- (b) to enable the General Synod, by canon, to create such a board in respect of persons licensed by the Primate, and
- (c) to confer a right of appeal from those boards to a specially constituted Review Tribunal.

3. Under section 67(1)(c) of the Constitution, this canon will not come into effect unless at least $\frac{3}{4}$ of the diocesan synods, including all metropolitan sees, have assented to it by ordinance with all such assents to be in force at the same time.

Comments

4. The canon addresses the need for an informal body to investigate allegations of sexual and other misconduct as an alternative to the Special Tribunal.

5. However under the current wording of subsection 63A(2), the jurisdiction given to a board or other body established under the canon may be significantly wider than that given to the Special Tribunal. The Standing Committee considers that the exclusions in subsection 6 relating to alleged breaches of faith, ritual or ceremonial and also matters that are before the Special Tribunal are insufficient to appropriately limit jurisdiction. For instance paragraph 63A(1)(b) of the canon could be used to regulate the activities of the Archbishop, including the power to suspend him from office without the approval of the Sydney Standing Committee.

6. The Standing Committee considers that the conduct that may be the subject of enquiry by a board or other body established under canon should be limited to moral conduct, as appropriately defined. An alternative is that only persons who hold a licence from the Primate may be the subject of inquiry.

7. The Standing Committee recommends to the Synod that assent not be given to the canon for the reasons set out in paragraph 5.

8. The Standing Committee has written to the General Secretary of the General Synod advising him of its objections and suggesting that consideration be given to the amendments set out in paragraph 6.

Schedule

Constitution Alteration (Chapter IX) Canon No 2004

Canon No.13, 2004

A canon to amend the constitution with respect to administrative bodies and appeals therefrom and for incidental matters

The General Synod prescribes as follows:

- 1 This Canon may be cited as the "Constitution Alteration (Chapter IX) Canon 2004".
- 2 In Chapter IX of the Constitution, after section 63 insert:
 - 63A (1) Despite anything to the contrary in this Constitution:
 - (a) a diocese may establish by ordinance any board or other body whose jurisdiction includes jurisdiction to inquire into the conduct of a person specified in such ordinance, including a person in respect of whom a diocesan tribunal may exercise jurisdiction;
 - (b) General Synod may establish by canon any board or other body which has jurisdiction to inquire into the conduct of a person:-
 - (i) in respect of whom the Special Tribunal may exercise jurisdiction; or
 - (ii) who holds a licence from the Primate in his capacity as Primate.
 - (2) A board or body referred to in subsection (1) may, in respect of whom it exercises jurisdiction, exercise such powers as may be specified in the ordinance or canon creating the board or body.
 - (3) The powers referred to in subsection (2) may include:

- (a) the powers conferred on a tribunal by section 60 and subsections (2) and (3) of section 62 of this Constitution; and
 - (b) the power to suspend a person from the duties of office or employment pending the completion of any inquiry by such board or body into the conduct of such person upon such terms and conditions as may be prescribed by such ordinance or canon, as the case may be, but without deprivation of emoluments pertaining to the office or employment of the person.
- (4) The powers referred to in subsection (3) may be exercised in respect of a person notwithstanding that the person is a person in respect of whom a diocesan tribunal or the Special Tribunal may exercise jurisdiction.
- (5) A person authorised by ordinance of a diocese or by canon of General Synod as the case may require may give effect to any recommendation or determination of a board or body referred to in this section.
- (6) A board or body referred to in this section shall not have power to hear, determine or make recommendations concerning:
 - (a) an alleged breach of faith, ritual or ceremonial;
 - (b) any act or omission which is the subject of a charge before or a determination of a diocesan tribunal or the Special Tribunal.
- (7) Subject to subsection (8), an appeal shall lie to a Review Tribunal from any recommendation or determination, other than by way of an interlocutory order, of a board or body referred to in this section.
- (8) An appeal referred to in subsection (7) shall only lie by leave of the Review Tribunal and shall be by way of review of the recommendation or determination that is the subject of the appeal and not by way of re-hearing.
- (9) In this section a reference to a Review Tribunal is a reference:

- (a) to a Review Tribunal constituted and having such powers as are conferred on it by canon of General Synod; and
 - (b) in the absence of any such canon, to the Appellate Tribunal.
- (10) This section applies and shall be deemed always to have applied to a board or body created by ordinance of a diocese or by canon of General Synod having or purporting to have effect at the time when the Constitution Alteration (Chapter IX) Canon 2004 comes into effect.
- 3 Section 67(1)(c) of the Constitution is amended by deleting the figure '63' and by substituting therefor the figure '63A'."

We certify that this bill was passed by the General Synod of The Anglican Church of Australia this Eighth day of October 2004.

A SKAMP
C MORONEY
Secretaries of Synod

Annexure 2

Holy Orders (Reception into Ministry) Canon 2004

1. The canon is printed in the schedule which follows this report.

What the canon does

2. The purpose of the Canon is to make provision for the reception into ministry of the Anglican Church of Australia of persons ordained by bishops in the historic episcopate but of churches not in communion with this Church.

Comments

3. The Standing Committee notes that in the canon the definition of "Church in communion with this Church" in clause 2 does not refer to section 6 of the 1961 Constitution (in contrast to the definition in the *Canon Concerning Holy Orders 2004*). The Standing Committee considers that the two canons should be consistent at this point and that there is advantage in tying the definition to section 6 of the 1961 Constitution, particularly in view of the proposed amendment to section 6 set out in the *Constitution Amendment (Relations with Other Churches) Canon 2004*.

4. The Standing Committee is also concerned with the limitations that this canon may put on a bishop's ability to license clergy. It is particularly concerned with the operation of the canon in circumstances where a bishop may render service in an independent evangelical church and at a later date wish to return to the Diocese. Paragraph 3(2)(c) would require the bishops of the Province to confirm the particular bishop's reception. It is suggested that paragraph 3(2)(c) be deleted.

5. The Standing Committee also suggests that clause 4 be amended so that it is permissive and leaves room for a person to be received otherwise than in accordance with a form of service approved by General Synod.

6. The Standing Committee recommends to the Synod that assent not be given to the canon for the reasons set out in paragraphs 3-5.

7. The Standing Committee has written to the General Secretary of the General Synod advising him of its objections and suggesting that consideration be given to the amendments set out in paragraphs 3-5.

Schedule

Holy Orders (Reception into Ministry) Canon 2004

Provisional Canon No. P1, 2004

The General Synod prescribes as follows:

Short title

1. This Canon may be cited as the *Holy Orders (Reception into Ministry) Canon 2004*.

Definition of Church in communion

2. In this Canon, a reference to a Church in communion with this Church is a reference to the Church of England in England or to a Church in communion with the Church of England in England or to a Church that, by resolution of General Synod, is a Church in Communion with the Anglican Church of Australia.

Reception into ministry

3. (1) Subject to sub-section (2), where a person has been consecrated bishop or ordained priest or deacon in a Church which is not in communion with this Church by a bishop or bishops within the historic episcopate, the bishop of a diocese of this Church may receive that person into the ministry of this Church as bishop, priest or deacon, as the case may be.
- (2) Before a bishop of a diocese receives a person into the ministry of this Church under this section, the bishop must first be satisfied by good and credible evidence—
 - (a) that the character and mode of living of the person as attested by witnesses specified by the bishop befit an ordained minister of this Church;
 - (b) that the attainments of the person in academic and theological studies are adequate for the person's proposed ministry in this Church;
 - (c) if the diocese is in a Province and the person is a bishop, the bishops of the Province have confirmed the proposed reception of the person into the ministry of this Church;
 - (d) that the person's reasons for desiring to be received into the ministry of this Church are sound and proper;
 - (e) that the person has a sufficient knowledge of, and accepts, the doctrine, discipline and forms of worship of this Church and has a sufficient

understanding of the matters in which this Church differs from the Church in which the person was consecrated or ordained.

Form of service

4. A person shall not be received into the Ministry of this Church except in accordance with a form of service authorised by General Synod or prepared by the Liturgy Commission and approved by the Standing Committee of General Synod.

Authority to minister

5. A person received into the ministry of this Church under this Canon shall not exercise the ministry of bishop, priest or deacon in this Church unless the person has been elected or appointed to an Episcopal office in this Church or is otherwise duly authorised by the bishop of a diocese to minister as a bishop, priest or deacon in that diocese.

Operation of Canon in diocese that has not adopted certain Canons

6. Nothing in this Canon shall make it lawful for a woman ordained to the office of priest in a Church not in communion with this Church to be received into the ministry of this Church as a priest in a diocese which has not adopted the *Law of the Church of England Clarification Canon 1992*;

Coming into force by adoption

7. The provisions of this canon affect the order and good government of this Church within a diocese and shall not come into force in a diocese unless and until the diocese adopts this canon by ordinance of the synod of the diocese.

We certify that this bill was provisionally passed by the General Synod of The Anglican Church of Australia this Seventh day of October 2004.

A SKAMP
C MORONEY
Secretaries of Synod