

General Synod 2007 Legislation

(A report from the Standing Committee.)

In view of the Synod's request in resolution 22/08 to consider distributing material electronically to minimise cost and wastage, this report has been printed in a form which does not reproduce copies of the relevant canons as annexures (which would comprise about 75 printed pages). The canons are reproduced as annexures to the version of the report published on the Secretariat's website www.sds.asn.au under "For Synod & Standing Committee" then "Synod in Past Years".

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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 www.sds.asn.au under "For Synod & Standing Committee" then "Acts & Ordinances"), 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 of its synod, *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 diocesan synod 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 2007

4. In 2007 the General Synod passed the following canons –
- Amendment to Strategic Issues, Commissions, Taskforces and Networks Amendment Canon 2007*
 - Australian College of Theology Canon 2007*
 - Canon Concerning Holy Orders 2004*
 - Constitution Alteration (Chapter IX) Canon Amendment Canon 2007*
 - Constitution Amendment (Diocesan Council) Canon 2007*
 - Constitution Amendment (Provinces and Dioceses) Canon 2007*
 - Constitution Amendment (Section 10) Canon 2007*
 - Constitution Amendment (Section 54A) Canon 2007*
 - Constitution Amendment (Suspension of Bishops) Canon 2007*
 - Episcopal Standards Canon 2007*
 - Financial Protection Canon Amendment Canon 2007*
 - Holy Orders (Reception into Ministry) Canon 2004*
 - Long Service Leave Canon 2007*
 - National Register Canon 2007*
 - Offences Canon Amendment Canon 2007*
 - Primate Canon Amendment Canon 2007*
 - Protection of the Environment Canon 2007*

Special Tribunal Canon 2007
Special Tribunal Canon Repeal Canon 2007

5. The General Synod also passed *The Solemnization of Matrimony Canon Amendment Canon 2007* as a provisional canon.

Canons in force

6. There are a number of canons which have taken effect because they do not affect the order and good government of the Church in a diocese. These canons are –

Amendment to Strategic Issues, Commissions, Taskforces and Networks Canon Amendment Canon 2007
Australian College of Theology Canon 2007
Financial Protection Canon Amendment Canon 2007
Primate Canon Amendment Canon 2007

Canons for adoption by our Synod

7. Each of the following canons contain declarations that they 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 –

Canon Concerning Holy Orders 2004
Episcopal Standard Canon 2007
Holy Orders (Reception into Ministry) Canon 2004
Long Service Leave Canon 2007
Protection of the Environment Canon 2007

8. It is considered that each of the following canons also affect the order and good government of the Church in a diocese and therefore also need to be adopted by our Synod in order to have effect in our Diocese –

National Register Canon 2007
Offences Canon Amendment Canon 2007
Special Tribunal Canon 2007
Special Tribunal Repeal Canon 2007

Canon Concerning Holy Orders 2004

9. The *Canon Concerning Holy Orders 2004* replaces the canons of 1603 dealing with ordained ministry, as well as putting in place minimum requirements for the ordination of a person as a deacon or priest and the consecration of a person as a bishop.

10. The Standing Committee considers the provisions of the canon are generally useful although section 5(1)(b) which requires a person to be confirmed in the Anglican Church before being ordained deacon introduces a new and inappropriate threshold for ordination.

11. The Standing Committee will bring recommendations about the Canon in due course.

Episcopal Standards Canon 2007

12. The *Episcopal Standards Canon 2007* sets up a procedure for dealing with matters of sexual abuse and any matters of alleged misconduct or omission of a member of the House of Bishops.

13. A copy of this Canon is set out in Annexure 1 of this report.

14. The Standing Committee acknowledges the need for a regime to deal with professional standards matters relating to bishops who are subject to the jurisdiction of the Special Tribunal. However the Standing Committee does not consider it is desirable, at least as far as our Diocese is concerned, for this matter to be dealt with under legislation of the General Synod. The Standing Committee considers that a diocesan approach would be preferable. Accordingly the Standing Committee recommends that our Synod not adopt this Canon.

Holy Orders (Reception into Ministry) Canon 2004

15. The purpose of the *Holy Orders (Reception into Ministry) Canon 2004* is to make provision for the reception into the 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.

16. A copy of this Canon is set out in Annexure 2 of this report.

17. The Standing Committee considers that there may be Churches that are not in communion with this Church that we wish to recognise other than under the restricted structure proposed by the Canon. The Standing Committee is of the view that this should be dealt with at the diocesan level. Accordingly the Standing Committee recommends that our Synod not adopt this Canon.

Long Service Leave Canon 2007

18. The primary purpose of the *Long Service Leave Canon 2007* and accompanying Schedule is to allow amendments to be made to the Long Service Leave regime between meetings of the General Synod by the utilisation of a Schedule to the Canon. Amendments to the 1995 Canon can take up to five years as General Synod meets every three years and agreement of all 23 dioceses can take a further two years.

19. Further, the Canon provides for a change in entitlement with effect from the adoption of the Canon for the amount of long service leave from ten weeks for ten years' service to thirteen weeks for ten years' service. This is to ensure a national approach which reduces potential exposure of a participating organisation to proceedings for breaches of a statutory regime.

20. A copy of this Canon is set out in Annexure 3 of this report.

21. The Standing Committee is aware that presently the Fund is operating at a considerable surplus and is concerned that section 48 of the Canon allows the Fund to be applied by the General Synod Standing Committee as it sees fit in the event that it is ever wound up. The Standing Committee has suggested instead that the net assets of the Fund should be apportioned among the participating dioceses in accordance with their General Synod membership, or their membership of the Fund (or some other appropriate manner determined by an Actuary) with each portion given or transferred to one or more Eligible Charities nominated by the diocesan council of the relevant diocese.

22. The Long Service Leave Board has agreed in principle to the Standing Committee's suggestion and has drafted amendments to the winding up provisions of the Canon with a view to these being considered by the General Synod in 2010. It is also understood that the Board intends to reduce the surplus by increasing benefits paid and lowering the rates of contribution.

23. Accordingly the Standing Committee recommends that our Synod not assent to the Canon. The Standing Committee has also recommended to our diocesan representatives on General Synod that they support the repeal of the Long Service Leave Canon 2007 and the re-enactment of the Canon in a form which includes the amended form of winding up provisions.

Protection of the Environment Canon 2007

24. The *Protection of the Environment Canon 2007* seeks to establish mechanisms by which the Church may respond to the threat of climate change. The Canon commits the Church to reducing its environmental footprint. The Canon requires each diocese to establish processes and procedures that are necessary to achieve this commitment. Each diocese is also required to report to General Synod in relation to its commitment.

25. A copy of this Canon is set out in Annexure 4 of this report.

26. The Standing Committee commends the sentiment behind the Canon but notes that our Synod has already passed resolutions 17/07 and 17/08 about climate change. Consistent with the terms of these resolutions, the Property Trust has undertaken environmental audits in a pilot group of parishes and developed an Environmental Assessment Report which express principles of good environmental stewardship and care.

27. In view of the work already being undertaken in this Diocese in relation to the environment, the Standing Committee recommends that

our Synod not adopt this Canon and that the following motion be moved at our request at Synod –

“Synod requests that a report be provided to its next session about the environmental initiatives being undertaken in the Diocese.”

National Register Canon 2007

28. Last year the Synod declared its opinion that the *National Register Canon 2007* affects the order and good government of the Church in this Diocese and, subject to this declaration, adopted the Canon. The Standing Committee also declared its opinion that the *National Register Canon 2007* affects the order and good government of the Church in this Diocese.

29. The General Synod Standing Committee will consider in due course whether it agrees with the declared opinion concerning order and good government.

Offences Canon Amendment Canon 2007

30. The *Offences Canon Amendment Canon 2007* rectifies an oversight in a 2003 amendment to section 56 of the 1961 Constitution to extend the jurisdiction of the Special Tribunal to include any bishop assistant to the Primate in his capacity as Primate. The Canon will extend offences to a bishop assistant to the Primate thereby covering the Bishop to the Defence Forces.

31. The Standing Committee has declared its opinion that the Canon affects the order of good government of the Church in the Diocese of Sydney and accordingly the General Synod Standing Committee will consider in due course whether it agrees with this opinion. The Standing Committee recommends that our Synod also declare this opinion and, subject to the declaration, adopt the Canon by ordinance.

32. A bill for the General Synod – Offences Canon Amendment Canon 2007 Adopting Ordinance 2009 and an explanatory statement for the bill are printed separately.

Special Tribunal Canon 2007

Special Tribunal Repeal Canon 2007

33. The *Special Tribunal Canon 2007* makes provision for the handling of complaints against bishops and for the operation of the Special Tribunal.

34. The Canon establishes the Episcopal Standards Commission (ESC) which has certain functions concerning the receipt, investigation and prosecution of complaints.

35. A copy of this Canon is set out in Annexure 5 of this report.

36. A former version of the Canon, the *Special Tribunal Canon 2004* was found by the Appellate Tribunal to affect the order and good government of the Church in a diocese because it provided that only the ESC had standing to prosecute matters before the Special Tribunal. The *Special Tribunal Canon 2007* provides that a charge may be brought by the ESC, another Bishop, or in respect of a Bishop holding office or a licence in a diocese, in accordance with the provisions of an ordinance of the synod of that diocese. The synod of a diocese may declare by ordinance under section 43(2) of the Canon that the ESC may not bring a charge against the bishop of the diocese.

37. 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 ESC carries out functions under that Canon as well, and the protocol adopted under that Canon may be used for the purposes of this Canon.

38. The *Special Tribunal Canon Repeal Canon 2007* repeals the *Special Tribunal Canon 2004*. A copy of this Canon is set out in Annexure 6 of this report.

39. The Standing Committee has declared its opinion that the Special Tribunal Canon 2007 affects the order and good government of the Church in this Diocese and accordingly the General Synod Standing Committee will consider in due course whether it agrees with this opinion. The Standing Committee recommends that the Synod also declare this opinion and not adopt this Canon.

40. For abundant caution, the Standing Committee also recommends that the Synod declare under section 43(2) of the Canon that should the Canon ever come into force in this Diocese, the ESC may not bring a charge in the Special Tribunal against the Archbishop of Sydney.

41. A bill for the General Synod – Special Tribunal Declarations Ordinance 2009 and an explanatory statement for the bill are printed separately.

Canons for assent by our Synod

42. 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 Amendment Canon 2007

Constitution Amendment (Diocesan Council) Canon 2007

Constitution Amendment (Provinces and Dioceses) Canon 2007

Constitution Amendment (Section 10) Canon 2007

Constitution Amendment (Section 54A) Canon 2007

Constitution Amendment (Suspension of Bishops) Canon 2007

43. Following the outcome of the 2005 reference to the Appellate Tribunal concerning women bishops, the Standing Committee considers that no reliance can now be placed on representations by church bodies or officers as to the effect of amendments to the Constitution proposed by them. Accordingly the Standing Committee is taking a more cautious approach than previously in making recommendations concerning amendments to the Constitution.

Constitution Alteration (Chapter IX) Canon Amendment Canon 2007

44. The *Constitution Alteration (Chapter IX) Canon 2007* 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 and Episcopal Standards Board, 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.

45. The Canon aims to address the concerns held by our Synod regarding the former version of the Canon passed at the 2004 session of General Synod. The 2004 Canon has not taken effect as an amendment to the Constitution as our Synod declined to assent to the Canon.

46. A copy of this Canon is set out in Annexure 7 of this report.

47. The amendments proposed by this Canon undergird the *Episcopal Standards Canon 2007*. In relation to that Canon, the Standing Committee has acknowledged that there is a regulatory gap to be filled in dealing with matters of misconduct by members of the House of Bishops, however it is not satisfied that the matter should be dealt with through a General Synod canon and would prefer that a diocesan approach to Episcopal standards be taken. Consistent with that view, the Standing Committee also considers that this constitutional amendment should not be supported. Accordingly the Standing Committee recommends that the Synod not assent to the Canon.

Constitution Amendment (Diocesan Council) Canon 2007

48. The *Constitution Amendment (Diocesan Council) Canon 2007* amends the definition of “Diocesan Council” in section 74(1) of the Constitution. The Constitution refers to a diocesan council in (at least) sections 30(c), 49, 52(1)(a), 61(4) and 69(1).

49. The amended definition replaces the word “means” with the word “includes” as follows –

“Diocesan Council” in a diocese where there is a synod includes the body exercising powers and functions of the synod on its behalf when it is not in session.

50. The amended definition changes the definition from a prescriptive definition to an inclusive definition in an effort to describe the councils of all dioceses. A number of dioceses do not have a body that exercises powers and functions of the synod. The amended definition is now capable of covering all diocesan councils – whether described as a council, a standing committee or otherwise.

51. A copy of this Canon is set out in Annexure 8 of this report.

52. The Standing Committee considers that the amended form of definition is confusing and that clarification is required. It is not clear what other bodies may also come within the definition of “Diocesan Council” and because of the openness of the definition it may be possible to have more than one body of a diocese satisfying the definition. The Diocesan Secretary has written to the Chairman of the Church Law Commission suggesting alternative drafting that would allow a diocesan synod to declare a body to be its diocesan council. Accordingly the Standing Committee recommends that our Synod not assent to the Canon.

Constitution Amendment (Provinces and Dioceses) Canon 2007

53. The *Constitution Amendment (Provinces and Dioceses) Canon 2007* is concerned with providing more flexibility within the Constitution to combine dioceses. The Canon enables provisions to be implemented quickly if required by providing a procedure that is much simpler than the present procedure for schemes of reconstruction.

54. A copy of this Canon is set out in Annexure 9 of this report.

55. The Standing Committee notes that the Canon uses the term “Metropolitan Diocese” whereas the Constitution uses the term “Metropolitan See”. The Standing Committee would like to see consistent terms used. The Standing Committee also has other concerns about the drafting. Accordingly the Standing Committee recommends that our Synod not assent to this Canon.

Constitution Amendment (Section 10) Canon 2007

56. The *Constitution Amendment (Section 10) Canon 2007* replaces the present provisions concerning the appointment of an Acting Primate to avoid previous uncertainty about what constitutes an event of “incapacity” of the Primate. An event of incapacity will arise where the Primate issues a written statement that he is unavailable to perform duties for more than fourteen days because of illness, incapacity, absence from Australia or annual or long service leave.

57. A copy of this Canon is set out in Annexure 10 of this report.

58. The Synod declined to consider this Canon at its 2008 session. The Church Law Commission has been advised of the Synod's decision. The Standing Committee understands there are a number of drafting issues in relation to the Canon that need to be resolved. Accordingly the Standing Committee recommends that the Synod not assent to the Canon.

Constitution Amendment (Section 54A) Canon 2007

59. The Constitution Amendment (Section 54A) Canon 2007 was promoted to the General Synod as a product of discussions between the Primate, the Bishop to the Defence Forces, the Defence Force Board and the Church Law Commission concerning the best way to ensure that defence force chaplains are subject to appropriate discipline and professional standards regulation.

60. Presently some chaplains may not be subject to any jurisdiction or, because of their mobility, be subject to the jurisdiction of a diocese that has no interest in taking any action.

61. The amendment allows the relevant jurisdiction to be able to be invoked by the Primate. The choice is either the diocese of the Primate or a diocese nominated by the Primate. Either case would require indemnity for costs of the proceedings by the General Synod.

62. The Canon seeks to make provision for this scheme by inserting a new section 54A in the Constitution. The scheme applies to both disciplinary proceedings brought in the diocesan tribunal and to professional standards matters.

63. A copy of this Canon is set out in Annexure 11 of this report.

64. The Standing Committee is concerned about the ability of the Primate to compel a diocesan tribunal to hear a matter notwithstanding provision for costs to be indemnified. Such indemnification only covers "reasonable" costs; there may be other overheads and resourcing implications. The Primate should request that a diocesan tribunal hear a matter and, if the request is declined, the matter should be heard in the Primate's own diocese.

65. The structure of the Defence Force Chaplaincy is also yet to be determined and is likely to be an item of business at the next session of the General Synod. The Standing Committee considers that it is premature to be assenting to the Canon at this time. Accordingly Standing Committee recommends that further consideration of the Canon be deferred until after the structure of the Defence Force Chaplaincy has been settled.

Constitution Amendment (Suspension of Bishops) Canon 2007

66. The Constitution Amendment (Suspension of Bishops) Canon 2007 amends s61A to provide for –

- (a) the possible suspension of any bishop who is subject to a charge before the Special Tribunal,
- (b) machinery to convene and chair a meeting of a diocesan council to consider whether to concur with a proposed suspension, and
- (c) a situation where the Primate is the subject of a charge and possible suspension.

67. The Constitution already provides for suspension of a diocesan bishop who is the subject of a charge before the Special Tribunal. The amendments enable non-diocesan bishops who are subject to a charge before the Special Tribunal to be suspended. The Standing Committee considers that the amendments are not objectionable. Accordingly Standing Committee recommends that our Synod assent to the canon.

68. A bill for the General Synod – Constitution Amendment (Suspension of Bishops) Canon 2007 Assenting Ordinance 2009 and an explanatory statement for the bill are printed separately.

Provisional Canon

The Solemnization of Matrimony Canon Amendment Canon 2007

69. *The Solemnization of Matrimony Canon Amendment Canon 2007* has been passed by the General Synod as a provisional canon and must be assented to by the Synod of each diocese before it will come into effect.

70. *The Solemnization of Matrimony Canon Amendment Canon 2007* amends the *Solemnization of Matrimony Canon of 1981* by removing the rule in subsection (b) of the latter Canon requiring at least one party to a marriage solemnized according to Anglican rites to be a baptised person.

71. The Provisional Canon affects the change by deleting subsection (b) of *The Solemnization of Matrimony Canon 1981*.

72. The removal of the baptism requirement will assist in promoting marriage within the non-Christian community. It may also provide a point of contact with couples who may otherwise not attend church and thereby provide opportunities for teaching and evangelism.

73. The Standing Committee is aware that at least three dioceses, including one metropolitan see, have already dissented from the Provisional Canon. The Provisional Canon will therefore return to the General Synod for further consideration regardless of whether our Synod assents to or dissents from it. The Standing Committee

understands that there is support among General Synod members for the Provisional Canon. The Standing Committee considers that there is merit in our Synod indicating its assent in order to strengthen the hand of Sydney representatives on the General Synod when the Provisional Canon is next considered by the General Synod. Accordingly, the Standing Committee recommends that the Synod assent to this Canon.

74. A bill for the General Synod – The Solemnization of Matrimony Canon Amendment Canon 2007 Assenting Ordinance 2009 and an explanatory statement for the bill are printed separately.

75. The Standing Committee considers that, in the event that the General Synod does not pass the Canon, it would be possible for our Synod to exclude *The Solemnization of Matrimony Canon 1981* and re-enact its provisions by ordinance without the requirement that at least one party be a baptised person.

Summary of recommendations to Synod

76. The Standing Committee recommends that the Synod not adopt the *Episcopal Standards Canon 2007* and the *Holy Orders (Reception into Ministry) Canon 2004*.

77. The Standing Committee recommends that the Synod not assent to the *Long Service Leave Canon 2007*.

78. The Standing Committee recommends that the Synod not adopt the *Protection of the Environment Canon 2007* but that the following motion be moved at our request at the Synod –

“Synod requests that a report be provided to its next session about the environmental initiatives being undertaken in the Diocese.”

79. The Standing Committee recommends that the Synod declare its opinion that the *Offences Canon Amendment Canon 2007* affects the order and good government of the Church in this Diocese and that the Synod adopt the Canon.

80. The Standing Committee recommends that the Synod declare its opinion that the *Special Tribunal Canon 2007* affects the order and good government of the Church in this Diocese and that the Synod not adopt the Canon. For abundant caution the Standing Committee also recommends that should the *Special Tribunal Canon 2007* ever come into effect in this Diocese, that the Synod declare by ordinance under section 43(2) of the Canon that the ESC may not bring a charge against the Archbishop of Sydney.

81. The Standing Committee recommends that the Synod not assent to the *Constitution Amendment (Chapter IX) Canon 2007*, the *Constitution Amendment (Diocesan Council) Canon 2007*, the

Constitution Amendment (Provinces and Dioceses) Canon 2007 and the Constitution Amendment (Section 10) Canon 2007.

82. The Standing Committee recommends that further consideration of the *Constitution Amendment (Section 54A) Canon 2007* be deferred until after the structure of the Defence Force Chaplaincy has been settled.

83. The Standing Committee recommends that the Synod assent to the *Constitution Amendment (Suspension of Bishops) Canon 2007*.

84. The Standing Committee recommends that the Synod assent to *The Solemnization of Matrimony Canon Amendment Canon 2007*.

For and on behalf of the Standing Committee.

ROBERT WICKS
Diocesan Secretary

25 August 2009

[Annexures 1 – 11 not reprinted here]