

## General Synod 2007 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 2007**

4. In 2007 the General Synod passed the following canons –
- 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*
  - Strategic Issues, Commissions, Taskforces and Networks Amendment 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 –
- Australian College of Theology Canon 2007*
  - Strategic Issues, Commissions, Taskforces and Networks Canon Amendment 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 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 should also 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*

9. The Standing Committee recommends that the *National Register Canon 2007* be adopted: see separate explanatory statement and bill.

10. The *Holy Orders (Reception into Ministry) Canon 2004* makes 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. A copy of this canon is set out in Annexure 1 of this report.

11. Standing Committee considers that this canon does not serve any purpose at this time for our Diocese. Accordingly the Standing Committee recommends that our Synod not adopt the canon.

12. The *Episcopal Standards Canon 2007* establishes a professional standards regime by which alleged misconduct or omission by a bishop who is subject to the jurisdiction of the Special Tribunal can be addressed. The conduct which can be examined under the canon excludes breaches of faith, ritual or ceremonial. The canon also makes provision for the General Synod or the General Synod Standing Committee to make a Code of Conduct to be observed by bishops. A copy of this canon is set out in Annexure 2 of this report.

13. 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 at the national level. The Standing Committee considers that a diocesan approach would be preferable. Accordingly the Standing Committee recommends that our Synod not adopt this canon.

14. The Standing Committee is considering further which of the other canons should be adopted by our Synod and intends to make recommendations about these canons 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 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*

16. 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.

17. The Standing Committee considers that the *Constitution Amendment (Section 10) Canon 2007* is unobjectionable and recommends that assent be given to the canon: see the separate explanatory statement and bill.

18. 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). 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.

A number of dioceses do not have a body that exercises powers and functions of the synod. The amendment changes the definition from a prescriptive definition to an inclusive definition in an effort to cover all diocesan councils – whether called a council or a standing committee or otherwise. A copy of the canon is set out in Annexure 3 of this report.

19. The Standing Committee considers that the amended form of definition lacks clarity. It is not clear what other bodies may also come within the definition of “Diocesan Council”. Because of its openness, it is possible for more than one body of a diocese to satisfy the definition. Accordingly the Standing Committee recommends that the Synod not assent to the canon.

20. The *Constitution Amendment (Provinces and Dioceses) Canon 2007* enables a province to consist of only the Metropolitan Diocese and, in that case, provides for the powers of the provincial synod to vest in the synod of the Metropolitan Diocese. At present a

Metropolitan Diocese must have at least three other dioceses associated with it. The canon also provides for the diocesan bishop or administrator to make emergency administration arrangements for the diocese with the concurrence of the diocesan council and the approval of the Metropolitan and the Primate. A copy of this canon is set out in Annexure 4 of this report.

21. 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 notes that the original form of the bill for the canon introduced at General Synod was extensively amended. The current form of the canon bears only a residual resemblance to the original bill with the effect that it is unclear whether the canon serves any useful purpose. Accordingly the Standing Committee recommends that our Synod not assent to this canon.

22. Standing Committee is giving further consideration to the remaining canons to amend the Constitution and intends to make recommendations to the Synod about these canons in due course.

#### **Provisional Canons**

23. 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.

24. The Standing Committee intends to bring a recommendation about this canon in due course.

#### **Summary of recommendations**

25. The Standing Committee recommends that the *National Register Canon 2007* be adopted.

26. The Standing Committee recommends that the *Holy Orders (Reception into Ministry) Canon 2004* and the *Episcopal Standards Canon 2007* not be adopted.

27. The Standing Committee recommends that assent be given to the *Constitution Amendment (Section 10) Canon 2007*.

28. The Standing Committee recommends that assent not be given to the *Constitution Amendment (Diocesan Council) Canon 2007* and the *Constitution Amendment (Provinces and Dioceses) Canon 2007*.

For and on behalf of the Standing Committee.

ROBERT WICKS

*Diocesan Secretary*

29 August 2008

**Annexure 1**

**Holy Orders (Reception into Ministry) Canon 2004**

The General Synod prescribes as follows:

**Short title**

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

**Reception into ministry**

2. (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, a majority of the diocesan bishops of the Province have approved the proposed reception of the person into the ministry of this Church;
- (d) if the diocese is not in a Province and the person is a bishop, a majority of the Metropolitans have approved the proposed reception of the person into the ministry of this Church;
- (e) that the person's reasons for desiring to be received into the ministry of this Church are sound and proper;
- (f) that the person –
  - (i) has a sufficient knowledge of 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; and
  - (ii) accepts the doctrine, discipline and principles of worship of this Church.

### **Form of service**

3. A person may be received into the Ministry of this Church 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**

4. 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 pursuant to the Constitution and the ordinances of this Church and the ordinances of the relevant diocese and Province 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**

5. (1) Nothing in this Canon shall make it lawful for a woman ordained to the office of deacon in a Church not in communion with this Church to be received into the ministry of this Church as a deacon in a diocese in with the *Ordination of Women to the Office of Deacon Canon 1985* is not in force.

(2) Nothing in this Canon shall make it lawful for a woman ordained to the office of priest or consecrated to the office of bishop in a Church not in communion with this Church to be received into the ministry of this Church as a priest or a bishop in a diocese in which the *Law of the Church of England Clarification Canon 1992* is not in force.

### **Coming into force by adoption**

6. 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.

**Annexure 2**

**Episcopal Standards Canon 2007**

A canon relating to professional standards of bishops and for other purposes.

The General Synod prescribes as follows:

**PART 1 – PRELIMINARY**

1. This Canon may be cited as the “Episcopal Standards Canon 2007”.
2. In this Canon, unless the context otherwise requires –
  - “Administrator” means the person who would, in the absence or incapacity of a Bishop, be the administrator of a diocese;
  - “Bishop” means a bishop referred to in section 56(6) of the Constitution; and “bishop” means a person in bishop’s orders;
  - “Board” means the Episcopal Standards Board established under Part 6;
  - “Church” means the Anglican Church of Australia;
  - “Church body” includes the Primate, the General Synod, a diocese, diocesan synod, diocesan council, diocesan trustee or trust corporation or other body responsible for administering the affairs of a diocese, or an institution or agency of this Church or of a diocese;
  - “Code of Conduct” means a code of conduct approved from time to time under Part 2;
  - “Director” means the Director of the ESC appointed under the Special Tribunal Canon 2007;
  - “Episcopal Standards Commission” or “ESC” means the Episcopal Standards Commission appointed under the Special Tribunal Canon 2007;
  - “examinable conduct” means any conduct or omission wherever or whenever occurring the subject of information which, if established, might call into question the fitness of a Bishop to hold office or to be or remain in Holy Orders but excludes any breach of faith, ritual or ceremonial;
  - “information” means information of whatever nature and from whatever source relating to the alleged misconduct or omission of a Bishop wherever or whenever occurring;
  - “national register” means a national register established pursuant to a Canon of General Synod for a purpose which includes the recording of determinations of the Board;

“protocol” means the protocol approved from time to time by the Standing Committee under Part 3;

“relevant Metropolitan”, means:

- (a) in relation to the bishop of a diocese –
  - (i) unless paragraph (iii) or (iv) applies, the Metropolitan of the Province in which the diocese is situated; or
  - (ii) if the diocese is an extra-provincial diocese, the Primate; or
  - (iii) if the bishop is the Metropolitan but not the Primate, the Primate; or
  - (iv) if the bishop is the Primate, the person who, at the relevant time, is the next most senior Metropolitan who is available, seniority being determined by the date of consecration; and
- (b) in relation to any other Bishop, the Primate;

“respondent” means a Bishop whose alleged conduct or omission is the subject of information;

“Standing Committee” means the Standing Committee of General Synod;

“Tribunal” means the Special Tribunal.

### **PART 2 – CODE OF CONDUCT**

3. The General Synod or the Standing Committee shall from time to time by resolution approve a Code of Conduct for observance by Bishops, which does not make provision for any matter concerning faith, ritual or ceremonial, provided that any changes to the Code of Conduct made by the Standing Committee shall be referred to the next session of General Synod for ratification.

4. The Standing Committee through the ESC and by such other means as may be considered appropriate shall take such steps as may be necessary or desirable to promote the knowledge, understanding and observance in this Church of the Code of Conduct. A code of conduct must not make provision for any matter concerning faith, ritual or ceremonial.

### **PART 3 – THE PROTOCOL**

5. (1) The Standing Committee shall from time to time consider and approve a protocol for implementation in relation to information.

- (2) The protocol must include –
  - (a) procedures for receiving information;

- (b) provision for informing complainants and victims of alleged conduct the subject of information, and respondents, of rights, remedies and relevant procedures available to them;
- (c) provision for assisting or supporting, as appropriate, all persons affected by alleged conduct the subject of information;
- (d) an explanation of the processes for investigating and dealing with information;
- (e) provisions for dealing fairly with respondents;
- (f) processes for referral to mediation and conciliation in appropriate circumstances;
- (g) provisions for information, reports, advice and recommendations to the Primate, the relevant Metropolitan and to the relevant Administrator at each stage of the process of dealing with information;
- (h) procedures for working, where appropriate, with law enforcement, prosecution or child protection authorities of the States and Territories and of the Commonwealth of Australia.

6. The Standing Committee through the ESC and by such other means as it may consider appropriate shall take such steps as may be necessary or desirable to promote throughout the Church a knowledge and understanding of the protocol.

#### **PART 4 – THE EPISCOPAL STANDARDS COMMISSION**

7. (1) In addition to the powers conferred on it by the Special Tribunal Canon 2007 and subject to the provisions of this Canon the ESC has the following powers and duties:

- (a) to implement the protocol to the extent that the protocol is not inconsistent with this Canon;
- (b) to receive information;
- (c) to act on information in accordance with the provisions of this Canon, and the protocol to the extent that it is not inconsistent with this Canon;
- (d) to appoint suitable persons to fulfil the several roles required to implement the protocol in each particular case;
- (e) where appropriate, to arrange for the conciliation or mediation of any complaint the subject of information;
- (f) to investigate information in a timely and appropriate manner;
- (g) where appropriate, to recommend to the Standing Committee any changes to the protocol;

- (h) subject to any limit imposed by the Standing Committee to authorise such expenditure on behalf of the General Synod as may be necessary or appropriate to implement, in a particular case, the protocol and the provisions of this Canon;
- (i) to advise any relevant Church body as to the financial, pastoral or other needs of a person affected by conduct the subject of information and as to any possible or actual legal proceedings against such Church body arising out of the alleged conduct of a bishop;
- (j) to refer any information in its possession to a member of a law enforcement, prosecution or child protection authority of a State or Territory or of the Commonwealth of Australia to which the information is or may be relevant;
- (k) to maintain proper records of all information received and of action taken in relation to such information.

(2) The Director may receive information on behalf of the ESC and shall carry out such functions under this Canon as the ESC may determine.

8. (1) In the exercise of its powers and duties under this Canon the provisions of sections 8, 9 and 10 of the Special Tribunal Canon 2007 shall apply to the ESC as if reference therein to the Tribunal were a reference to the Board and reference to a complaint were a reference to information.

(2) Subject to subsection (3), the ESC may delegate, upon such terms and conditions as the ESC may approve, any of its powers or functions under this Canon to any person.

- (3) The ESC cannot delegate –
- (a) its powers under subsection (2);
  - (b) its powers under section 13; or
  - (c) its powers under section 16.

(4) A delegation under this section must be made by instrument in writing signed by a member of the ESC.

#### **PART 5 – EXAMINABLE CONDUCT**

9. Subject to this Canon, where the ESC considers that the subject matter of information constitutes examinable conduct it shall investigate the information.

10. The ESC may decide not to investigate the information or may refrain from further investigation of the information if –

- (a) in its opinion, the allegations the subject of the information are vexatious or misconceived, or their subject matter is trivial;
- (b) the subject matter is under investigation by some other competent person or body or is the subject of legal proceedings;
- (c) the person making allegations of examinable conduct or a person affected by the conduct the subject of the information has failed, when requested by the ESC, to provide further particulars or to verify the allegations by statutory declaration; or
- (d) in its opinion there is insufficient reliable evidence to warrant an investigation or further investigation.

11. For the purpose of an investigation the ESC or an investigator shall obtain such statutory declarations, written statements, recorded conversations, reports, documents and other material as the ESC or its delegate considers necessary or desirable.

12. (1) The ESC may by notice in writing to a respondent require the respondent to provide a detailed report to the ESC within the time specified in the notice in relation to any matter relevant to the investigation.

- (2) It is the obligation of a respondent –
  - (a) not to mislead the ESC or a member or delegate of the ESC;
  - (b) not unreasonably to delay or obstruct the ESC or a member or delegate of the ESC in the exercise of powers conferred by this Canon.

(3) If a respondent declines to answer a question on the ground that the answer might tend to incriminate the person a written record shall be made of the question and of the ground of refusal.

13. (1) At any time after the ESC has commenced or caused to be commenced an investigation of information under this Part in circumstances where it considers that action may be taken under paragraph (b) or (c) of section 16, it may recommend to the Diocesan Council or, in the case of a Bishop who is not a diocesan bishop, to the Primate, that the Bishop be suspended from the duties of office.

(2) If the Diocesan Council, meeting when the Bishop is not present, or the Primate, as the case may be, concurs in the recommendation, the President of the Board, after considering any submission from the Bishop, may suspend the Bishop from the duties of office.

(3) The meeting of the Diocesan Council referred to in subsection (2) shall be chaired by a Diocesan Bishop appointed by the

Primate with the concurrence of a majority of the Metropolitans. The Diocesan Bishop so appointed shall not have a vote at the meeting.

(4) Where an investigation has been commenced against the Primate under this part, the powers and functions of the Primate under sub-section (3) shall be exercised by the person who would exercise the authorities, powers, rights and duties of the Primate if there were a vacancy in the office.

(5) For the purposes of this section a reference to the Metropolitans excludes a Metropolitan who at the time is the subject of an investigation under this part.

14. Before suspending a Bishop from the duties of office the President of the Board shall take into account –

- (a) the seriousness of the conduct alleged in the information;
- (b) the nature of the material to support or negate the allegations;
- (c) whether any person is at risk of harm;
- (d) after consultation with the relevant Diocesan Council or its representative, the effect on the respondent, a relevant Church body and on the Church in the diocese of acting and of not acting under section 13; and
- (e) any other allegation of similar examinable conduct previously made to the ESC or to an equivalent body within the previous ten years;

and may take into account any other relevant matter.

15. (1) A suspension under section 13 or a voluntary standing down from office by the Bishop as a result of an investigation by the ESC –

- (a) has effect as an absence of the Bishop from the see or from office as the case may require; and
- (b) continues until it ceases to have effect by reason of –
  - (i) the ESC terminating the investigation without taking action under section 16;
  - (ii) a determination to that effect by the Board or the Tribunal as the case may be; or
  - (iii) the see or the office becoming vacant (whether or not under this Canon);

whichever first occurs.

(2) During any such suspension or voluntary standing down the Bishop is entitled to receive whatever stipend, allowances and

other benefits that would otherwise have accrued and which are to be met or reimbursed by the body normally responsible for their payment.

16. At any time after the commencement of an investigation under this Part the ESC may –

- (a) if it considers on reasonable grounds that the Bishop may be incapable, report the matter in writing to the relevant Metropolitan, and such report shall be a report for the purposes of section 4 of the Bishop (Incapacity) Canon 1995 as if it were made by three members of the synod of a diocese pursuant to that section;
- (b) refer to the Board the fitness of the Bishop, whether temporarily or permanently, to hold office or to remain in Holy Orders;
- (c) whether or not the information the subject of the investigation is also the subject of a complaint under the Special Tribunal Canon 2007, institute, amend or withdraw proceedings by way of charge against the Bishop before the Tribunal; or
- (d) in the event that the bishop whose conduct is under investigation ceases to be a Bishop, refer the matter, together with such information as it shall have received, to the bishop of the diocese in which the former Bishop then resides.

17. (1) The fact that the subject matter of a complaint or dispute concerning examinable conduct may be settled or resolved in whole or in part between the parties affected thereby does not prevent the ESC from taking any of the steps referred to in section 16 in respect of the subject matter of the complaint or dispute.

(2) Any term of settlement or resolution referred to in subsection (1) which purports to prevent or to limit the institution of such proceedings shall be of no effect.

(3) A matter shall not be referred to the Board, a reference to the Board shall not continue and proceedings shall not be instituted or maintained in the Special Tribunal where the bishop concerned has relinquished or has been deposed from Holy Orders in accordance with the Holy Orders Relinquishment and Deposition Canon 2004.

#### **PART 6 – EPISCOPAL STANDARDS BOARD**

18. There shall be an Episcopal Standards Board constituted and appointed in accordance with the provisions of this Part.

19. (1) Subject to the provisions of this Canon the function of the Board is to inquire into and determine a question referred to it pursuant to section 16, to make a determination referred to in section

49 and where appropriate to make a recommendation in accordance with the provisions of this Canon.

(2) Subject to section 17(3) the Board may make a determination and recommendation referred to in sub-section (1) notwithstanding that the bishop whose conduct is the subject of the reference has ceased, after the reference, to be a Bishop.

20. (1) The members of the Board in a particular case shall be appointed from a panel comprising –

- (a) a President and a Deputy President, both of whom shall be persons who are eligible for appointment as lay members of the Appellate Tribunal;
- (b) five persons in bishop's orders; and
- (c) five persons who are members of the Church not in bishop's orders.

(2) A person who is a member of the panel from whom the members of the Tribunal may be appointed is eligible for appointment to the panel.

21. The members of the panel shall be appointed by the Standing Committee and shall hold office in accordance with a resolution of the Standing Committee.

22. Any vacancy in the membership of the panel shall be filled by or in accordance with a resolution of the Standing Committee.

23. (1) The members of the panel to be convened for any reference to the Board shall be determined by the President or, if there is a vacancy in the office of President, by the Deputy President.

(2) For the purpose of any reference to the Board, the Board shall consist of the President or Deputy President, who shall be the presiding member, and an equal number not exceeding two of the episcopal and other members of the panel.

(3) Where possible, the Board shall include at least one man and at least one woman.

(4) Where, in the opinion of the President or, if there is a vacancy in the office of the President, in the opinion of the Deputy President a member of the panel has a personal interest in a matter before the Board the member shall be disqualified from participating in the reference.

(5) For the purposes of this section a vacancy in the office of President includes a situation in which the President is not able to act because of a personal interest in a matter, illness or absence from Australia.

24. (1) The Rules of the Board made under this Part may provide that, in relation to the exercise of specified functions, or in relation to matters of a specified class, the Board may, at the direction of the presiding member, be constituted by a single member sitting alone.

(2) The Board, if constituted by a single member sitting alone, cannot make a determination under section 49.

25. If a member of the Board, other than the presiding member, dies or is for any other reason unable to continue with any matter referred to the Board, the Board constituted of the presiding member and the other member or members may, if the presiding member so determines, continue and complete the reference.

26. The Board, separately constituted in accordance with this Part, may sit simultaneously for the purpose of matters referred to it or for conducting separate business of the Board.

27. An act or proceeding of the Board is not invalid by reason only of a vacancy in its membership or of the membership of the panel and, notwithstanding the subsequent discovery of a defect in the nomination or appointment of members of the panel or the Board, any such act or proceeding is as valid and effectual as if the member had been duly nominated or appointed.

28. There shall be a Secretary to the Board who shall be appointed by or in accordance with a resolution of the Standing Committee, and whose duties shall be defined by the President.

29. (1) In any proceedings of the Board where the Board is constituted by two or more members –

- (a) any question of law or procedure will be determined by the presiding member; and
- (b) any other question will be determined by majority decision of the members, and in the case of an equality of votes the opinion of the presiding member shall prevail.

(2) Where the Board is constituted by a member sitting alone who is not the President or the Deputy President, any question of law that arises must be referred to the President or Deputy President for decision and any decision made on such a reference is a decision of the Board.

(3) The Board must act with fairness and according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms and is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks fit.

(4) Without limiting the meaning and effect of sub-section (3), the Board may receive evidence of a witness in the form of an affidavit, statutory declaration or a signed statement without the need for the personal attendance of the witness, and may also use electronic means such as video link or conference telephone to receive evidence and submissions, but must permit the respondent and his representative (if any) opportunity to adequately cross-examine each witness

(5) The Board may inform itself from the record of any court or tribunal and may adopt any findings, and accept as its own, the record of any court or tribunal.

30. The Board may, for the purpose of any particular reference and at the cost of the General Synod, appoint such person or persons, including the Director, to assist it in inquiring into (but not determining) that reference as the Board thinks fit.

31. The Board must give reasons for any determination, other than by way of directions in the course of an inquiry, unless the determination is made by consent of the respondent.

32. (1) The Board has no power to award costs of any proceedings before it.

(2) A bishop in relation to whom a question is the subject of a reference to the Board may apply to the Standing Committee for the provision of legal assistance.

(3) The Standing Committee may grant legal assistance to a bishop on such terms and subject to such conditions as it shall determine.

33. (1) The President may make Rules of the Board reasonably required by or pursuant to this Canon and in relation to the practice and procedure of the Board.

(2) Subject to this Canon and the relevant Rules, the practice and procedure of the Board will be as directed by the presiding member of the Board.

#### **PART 7 – REFERENCE OF MATTERS TO THE EPISCOPAL STANDARDS BOARD**

34. A question shall be referred to the Board by delivering to the Secretary of the Board a written report of the investigation of the ESC signed by a member of the ESC.

35. The Board shall not, in the course of inquiring into any question –

(a) inquire into any matter which is or has been the subject of any formal investigation or enquiry conducted;

- (i) under or pursuant to any provision of the Constitution; or
  - (ii) under or pursuant to a Canon of the General Synod or an Ordinance of a diocese relating to the discipline of clergy or Church workers by a board of enquiry, tribunal or other body;  
but may take into account the finding of any such formal investigation or enquiry;
- (b) inquire into, make any findings in relation to or take into account any alleged breach of:
- (i) faith of the Church, including the obligation to hold the faith;
  - (ii) ritual of the Church, including the rites according to the use of the Church and the obligation to abide by such use; or
  - (iii) ceremonial of the Church, including ceremonial according to the use of the Church and the obligation to abide by such use.

36. (1) Upon delivery of the report to the Secretary of the Board, the President or Deputy President as the case may be shall as soon as possible determine the membership of the Board for the purpose of the reference.

(2) The President or Deputy President as the case may require shall thereupon cause to be convened a sitting for the purpose of giving directions.

(3) A person or body appearing or represented before the Board shall comply with the Rules of the Board and with any directions given by the Board.

37. Within 14 days of the date of the reference of a matter to the Board or within 14 days of the date of the document or material coming to existence, whichever is the later, the ESC shall cause to be delivered to the Secretary of the Board any documents and material relevant to the reference.

38. The ESC, as soon as practicable after delivering the report referred to in section 34 to the Secretary of the Board, shall cause a signed copy of the report to be delivered to the respondent.

39. The Board may at any time and from time to time give directions –

- (a) as to the inspection by and supply of copies to the respondent or any other person of the documents or material relevant to the reference;
- (b) as to the conduct of its inquiry into the reference.

40. The Board may at any time and from time to time give directions to the ESC as to any further inquiries or investigation it requires to be carried out for the purposes of the reference and the ESC shall to the best of its ability cause such directions to be carried out.

41. (1) The Board shall deal with any reference as expeditiously as possible.

(2) The Board may, if it sees fit, proceed with the determination of a reference notwithstanding that there may be mediation or conciliation proceedings relating to the subject matter of the reference being conducted by or at the direction of the ESC and notwithstanding that there may be criminal or other proceedings being taken against the respondent or some other person.

42. (1) The place and time of sitting of the Board comprising two or more members shall be as determined by the presiding member.

(2) The place and time of sitting of the Board comprising one member shall be as determined by that member.

43. (1) Subject to sub-section (2), the Board must give the following persons reasonable notice of the time and place of a sitting of the Board –

- (a) the Director; and
- (b) the respondent; and
- (c) such other persons as the Board believes have a proper interest in the matter.

(2) The Board is not obliged to give notice of a sitting to a person whose whereabouts cannot, after reasonable enquiries, be ascertained.

44. In any proceedings before the Board –

- (a) the ESC and any person may be represented by a legal practitioner or, with leave of the Board, by any other person;
- (b) the ESC or its appointed representative shall do all in its power to assist the Board and shall carry out any directions of the Board;
- (c) the Board –
  - (i) must give the ESC and the respondent a reasonable opportunity to call or give evidence, to examine or cross-examine witnesses and to make submissions to the Board; and
  - (ii) must give any other person to whom notice of the proceedings was given or who satisfies the Board that he or she has a proper interest in the matter

a reasonable opportunity to make submissions to the Board.

45. (1) Subject to sub-section (2), a sitting of the Board on a reference before the Board is an open sitting.

(2) On any such sitting before the Board, the Board has an absolute discretion:

- (a) to direct that no person other than:
  - (i) the respondent and any person representing him or her in the proceedings; and
  - (ii) witnesses or persons making submissions (while giving evidence or making those submissions); and
  - (iii) officers of the Board or persons assisting the Board; and
  - (iv) members of or persons appointed by the ESC; be present in the room while the Board is sitting; or
- (b) to direct that a particular person (other than a person referred to in paragraph (a)) not be present in the room while the Board is sitting.

46. The Board may make a determination in any proceedings in the absence of a person affected by the determination if satisfied that reasonable efforts were made to give that person an opportunity to appear.

47. (1) The Board may require a respondent to submit within a specified time to a medical, psychiatric or psychological examination by a person approved by the Board the cost of which shall be met from funds under the control of the General Synod.

(2) A copy of the report of an examination under subsection (1) shall be provided to the respondent and to the Board.

48. In making any determination the Board shall take into account –

- (a) the conduct of the bishop as it finds it to have been;
- (b) in the material before the Board, any other fact or circumstance relevant to the determination of the question before it; and
- (c) any failure of the bishop to comply with a provision of this Canon or with a direction of the Board.

49. If, after investigating the question referred to it about a bishop, the Board is satisfied that –

- (a) the bishop should be counselled;
- (b) the bishop's continuation in office should be subject to conditions or restrictions;

- (c) the bishop is unfit, whether temporarily or permanently, to hold office; or
  - (d) the bishop is unfit to remain in Holy Orders;
- the Board may determine accordingly and may –
- (e) direct that the bishop be counselled;
  - (f) direct that the bishop's holding of office shall be subject to such conditions or restrictions as the Board may specify;
  - (g) direct that the bishop cease to carry out the duties and functions of his office from such time and for such period determined by the Board;
  - (h) direct that the bishop resign from the office, within such time as is specified by the Board;
  - (i) direct that the operation of a determination referred to in paragraphs (f) to (h) shall be suspended for such period and upon such conditions as the Board shall specify;
  - (j) direct that the bishop relinquish Holy Orders within such time as is specified by the Board;
  - (k) give such other direction as the Board sees fit.

50. The Board shall cause a copy of each determination and direction to be provided –

- (a) to the Primate;
- (b) to the relevant Metropolitan;
- (c) to the respondent;
- (d) to the relevant administrator; and

shall cause relevant details to be forwarded for entry into the national register.

51. (1) The bishop shall comply with a direction of the Board.

(2) Failure of the bishop to comply with a direction of the Board is an offence.

(3) The ESC may institute proceedings forthwith in the Tribunal in respect of an offence against this section or, if the bishop is no longer a Bishop, shall refer the matter, together with such relevant information concerning the alleged offence as may be in its possession, to the bishop of the diocese in which the bishop is then resident.

#### **PART 8 – APPEAL**

52. In this Part, unless the context otherwise requires

“reviewable decision” means a recommendation or determination of the Board other than by way of an interlocutory order;

“Review Tribunal” means the Review Tribunal referred to in section 63A of the Constitution or, if no such section has been enacted, a Review Tribunal constituted for the purposes of this Part;

“the appropriate State professional body” means the Bar Association or equivalent body or, if there is no such body, the Law Society of the State or Territory in which the Bishop when a Bishop resides or resided as the case may be;

“the relevant Chancellor” means the Primate’s Chancellor or, if the intended subject of a review under this Part is the Primate, the Chancellor of the Senior Metropolitan referred to in section 10 of the Constitution.

53. For the purposes of this Canon the Review Tribunal shall consist of a barrister of not less than 5 years standing appointed by the President of the appropriate State professional body or, if the President is unwilling to appoint, or unreasonably delays doing so, appointed by the relevant Chancellor.

54. A bishop who is aggrieved by a reviewable decision may apply to the Director for a review of the decision.

55. The application may be made on any one or more of the following grounds –

- (a) That a breach of the rules of natural justice happened in relation to the making of the reviewable decision which materially affected the decision;
- (b) That procedures that were required by this Canon to be observed in relation to the making of the reviewable decision were not observed, and the non-observance materially affected the decision;
- (c) That the Board did not have jurisdiction to make the reviewable decision; or
- (d) That the reviewable decision was so devoid of any plausible justification that no reasonable Board could have made it.

56. For a reviewable decision, the provisions of section 51 shall not apply until the time for lodging an application for review has passed, and no application has been lodged.

57. The making of an application for review acts as a stay of the reviewable decision pending determination by the Review Tribunal.

58. For a reviewable decision, the Board shall not cause the relevant details to be forwarded for entry into the national register under section 50 until –

- (a) the time for lodging an application for review has passed, and no application has been lodged; or
- (b) where an application for review has been heard and determined, the determination has been made.

59. If leave to appeal is refused or a determination on review confirms or varies a reviewable decision, then the Board must cause the details of the confirmed or varied decision to be forwarded for entry into the national register as soon as it receives the Review Tribunal's determination.

60. If a Review Tribunal's determination refers a matter back to the Board, then the Board must –

- (a) determine to take no further action in respect of the matter; or
- (b) deal with the matter in accordance with Part VII of this Canon, in accordance with such directions or recommendations as the Review Tribunal may make in the Tribunal's determination; or
- (c) deal with the matter in accordance with Part VII of this Canon applying such of the provisions of Part VII as, in the discretion of the Board and in accordance with the Review Tribunal's determination, the Board sees fit.

61. An application to the Director for review of the reviewable decision must be made within 14 days of the bishop's being provided with a copy of the Board's determination and recommendation under section 50. The application for review must –

- (a) be in writing addressed to the Director; and
- (b) set out the grounds for review in the application.

62. On receipt of an application for review, the Director must immediately seek the appointment of a Review Tribunal.

63. Upon appointment of a Review Tribunal, the Director must ask the Review Tribunal for the Tribunal's estimate of the fee to be charged by the Review Tribunal in making a determination under this Part. Upon receipt of advice as to the estimated fee, the Director must immediately notify the applicant. Within 7 days of receipt of the Director's advice, or such further time as the Review Tribunal may allow, the applicant must pay one half of the estimated fee to the Review Tribunal, or to a person nominated by the Tribunal. If the applicant fails to make the payment within the time specified, then the application for review will lapse.

64. Unless otherwise specified in this Canon, the manner in which the review is to be conducted will be determined by the Review Tribunal.

65. On an application for review of a reviewable decision, the Review Tribunal may make all or any of the following determinations –

- (a) a determination quashing or setting aside the reviewable decision;
- (b) a determination referring the matter to which the reviewable decision relates to the Board for further consideration, subject to such directions (including the setting of time limits for the further consideration, and for the steps to be taken in the further consideration) as the Review Tribunal determines;
- (c) a determination declaring the rights of the applicant in relation to any matter to which the reviewable decision relates;
- (d) a determination directing either the applicant or the Board, to do, or to refrain from doing, anything that the Review Tribunal considers necessary to do justice between the parties; or
- (e) a determination confirming the reviewable decision.

66. The Review Tribunal may make such order as to the costs of the review as the Tribunal thinks fit.

67. The review shall be by way of a review of the recommendation or determination that is the subject of the review and not by way of re-hearing."

#### **PART 9 – REGULATIONS**

68. The Standing Committee may from time to time make, amend or repeal Regulations, not inconsistent with the provisions of this Canon, providing for records arising out of or incidental to the operation of this Canon, and for all or any of the purposes whether general or to meet particular cases, which may be convenient for the administration of this Canon or which may be necessary or expedient to carry out the objects and purposes of this Canon.

#### **PART 10 – ADOPTION**

69. 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

**Annexure 3**

**A Constitution Amendment (Diocesan Council)  
Canon 2007**

A canon to amend section 74(1) of the Constitution.

The General Synod prescribes as follows:

**Short title**

1. This Canon may be cited as the Constitution Amendment (Diocesan Council) Canon 2007.

**Definition of Diocesan Council**

2. In section 74(1) of the Constitution, in the definition of "Diocesan Council" for "means" substitute "includes".

**Annexure 4**

**Constitution Amendment (Provinces and Dioceses) Canon 2007**

Canon to amend the Constitution with respect to provinces and dioceses.

The General Synod prescribes as follows:

**Short title**

1. This Canon may be cited as the "Constitution Amendment (Provinces and Dioceses) Canon 2007".

**Provinces**

2. The Constitution is amended by adding new sections 38A and 38B –

"38A Subject to section 38B, a province shall comprise a Metropolitan Diocese and one or more other dioceses.

38B A province may consist of a Metropolitan Diocese only, and for so long as that is the case, the provincial synod, the provincial council and the constitution of the province remain suspended and all powers of the provincial synod vest in the synod of the Metropolitan Diocese."

**Emergencies**

3. The Constitution is further amended by inserting after section 45 the following new section 45A –

"45A. A diocesan Bishop, or if there be none in office, the administrator of a diocese, with the concurrence of the Diocesan Council and the approval of the Metropolitan and the Primate, may make such administrative arrangements for the emergency administration of that diocese as the bishop or administrator as the case may be considers appropriate provided that no such arrangement shall last longer than the termination of the next ordinary session of the General Synod unless such session by resolution authorizes its continuation."

**Ancillary Amendments**

4. The Constitution is further amended as follows –
  - (a) By amending section 52(2)

- (i) by substituting the words “Metropolitan Diocese” for the words “metropolitan see”; and
  - (ii) by deleting the words “or to have associated with it three dioceses.”
- (b) By adding to section 74(1) in the appropriate alphabetical order –
- “Metropolitan Diocese” means each of the dioceses of Sydney, Melbourne, Brisbane, Perth and Adelaide.