

General Synod – Bishop (Incapacity) Canon 1995 Adopting Ordinance 1999

Explanatory Statement

Introduction

1. The Bishop (Incapacity) Canon 1995 (the "Canon") seeks to provide a better procedure for vacating a See when a bishop becomes incapable of filling his office. The Bishop (Incapacity) (Amendment) Canon 1998 corrects cross referencing errors in the Canon and does not propose any substantive amendments to the Canon.
2. The Canon affects the order and good government of the Church in a diocese and so does not come into effect in Sydney unless the Synod, by ordinance adopts the Canon.

The 1891 Determination

3. The current procedure for dealing with an incapable bishop is found in an 1891 Determination of the General Synod. Under the 1891 Determination a bishop who was mentally incapable of administering his diocese could be removed in the following circumstances -
 - (a) If a court of competent jurisdiction declared that a bishop was incapable of managing his affairs, the Primate could declare the bishop's see vacant.
 - (b) If there was no court declaration but the Primate was satisfied, upon the report of the majority of the members of the Diocesan Council, Standing Committee or the corresponding body in a diocese (accompanied and supported by 3 doctors' certificate), that there was a prima facie reason to believe that the bishop was incapable by any form of mental or cerebral disease of administering his see, the Primate could appoint 3 bishops to form a Commission of Enquiry to investigate and report and if the Commission reported that the bishop was incapable, the Primate could declare the see vacant.
4. The General Synod considers that there are difficulties with the provisions of the 1891 Determination. In particular, the Determination does not cover the case where the bishop is unable to be persuaded to obtain a medical opinion.

Procedure in the Canon

5. The Canon provides a new procedure for dealing with the incapacity of a bishop -
 - (a) If a court, tribunal or other authority makes an order to the effect that a bishop is incapable, the Metropolitan (being the Metropolitan of the province, or where the bishop is a Metropolitan, the Primate) may declare the see vacant. However before doing so, the Metropolitan must enquire of a chancellor of a diocese, make such other enquiries as he thinks fit and consult with the Diocesan Council or the Standing Committee of the diocese concerned.
 - (b) If 3 members of the synod of a diocese consider on reasonable grounds that the bishop of the diocese may be incapable the Canon permits them to report the matter to the Metropolitan. The Metropolitan may then appoint a panel consisting of at least 3 persons, including a doctor and a lawyer, to investigate the matter and report within 2 months or such longer time as the Metropolitan allows. A copy of the report must then be sent to the bishop and, if the panel considers that there are reasonable grounds for considering that the bishop is incapable, the bishop has 21 days to respond. If the bishop does not contest the report the Metropolitan, after consulting with the Standing Committee or the Diocesan Council of the diocese concerned, may declare the see vacant.
 - (c) If the bishop contests the report, the Metropolitan must appoint a tribunal consisting of 3 persons (the chancellor of a diocese, the bishop of a diocese and a qualified medical practitioner) appointed by the Metropolitan to determine the matter. If the tribunal determines that the bishop is incapable, the bishop may appeal a question of law to a tribunal consisting of the members of the Appellate Tribunal. Subject to such appeal, the Metropolitan may declare the bishop's see vacant after consulting with the Standing Committee or Diocesan Council of the diocese concerned.

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- (d) If the panel referred to in (b) considers that there are reasonable grounds for considering that the bishop is incapable, the Metropolitan may suspend the bishop from office. The suspension, which has the effect of an absence of the bishop from the see, continues until such time as the tribunal referred to in (c) determines that the bishop is not incapable, or until the see becomes vacant, whichever first occurs.
6. The Canon defines "incapable" in relation to a person who is the bishop of a diocese to mean -
- (a) incapable, continuously or intermittently, of managing the person's affairs ; or
 - (b) by reason of a physical or mental disability of any kind, unable, continuously or intermittently, to make reasonable judgments in respect of matters relating to all or any part of the carrying out of the person's affairs or the affairs.
7. The Canon provides that any expenditure incurred by the Metropolitan in the administration of the Canon in relation to a bishop is to be paid or reimbursed by the bishop's diocese.
8. In 1996, the Synod deferred consideration of the Canon until after receiving the report of the Select Committee on Clerical Enquiries (resolution 4/96). That report has now been received, although consideration of the bills recommended by the Select Committee has not been concluded.

Recommendation

9. The Standing Committee recommends that Synod pass the bill as an ordinance.

For and on behalf of the Standing Committee

ROBERT WICKS
Legal Officer

12 August 1999