

## General Synod – Constitution Alteration (Canonical Fitness) Canon and Bill 1989 Assenting Ordinance 1994

### Explanatory Statement

#### Introduction

1. In 1990 the Sydney Synod passed an ordinance to assent to the Constitution Alteration (Canonical Fitness) Canon 1989 (No.9 of 1989) ("Canon") and the Constitution Alteration (Canonical Fitness) Bill 1989 (No.5 of 1989) ("Bill"). The then Archbishop declined to assent to the ordinance on the grounds that the Canon and Bill would alter the basic qualification for canonical fitness namely, that a person should be male.

#### Purpose of the Bill

2. The purpose of the ordinance is to assent to the Canon and Bill.

#### Further Background

3. Under section 67(1)(d) of the 1961 Constitution, the Canon does not have effect unless and until at least 3/4 of the diocesan synods, including all the metropolitan sees, have assented to it by ordinance with all such assents to be in force at the same time. Sydney, Ballarat, the Murray and Wangaratta have not assented to the Canon.

4. The effect of the Canon is to insert the following definition of "Canonical Fitness" into section 74 of the 1961 Constitution in place of the present definition -

"Canonical fitness" means, as regards a person, that -

- (a) the person has attained at least 30 years of age;
- (b) the person has been baptised; and
- (c) the person is in priests' orders.

5. The meaning of "Canonical fitness" is relevant to section 8 of the Constitution which provides -

"There shall be a bishop of each diocese who shall be elected as may be prescribed under or by the Constitution of the Diocese, provided that the election shall as to the canonical fitness of the person elected be subject to confirmation as described by ordinance of the provincial synod....".

6. The present definition in the 1961 Constitution is not helpful. It is as follows -

"Canonical fitness' means the qualifications required in the Church of England for the office of bishop, at the date when this Constitution takes effect."

7. The General Synod Canons Committee has advised as follows -

"The proposed definition represents the position as understood by the Canon Law Commission of the Anglican Church of Australia and, if this is correct, it does not make any change in the Constitution or the law. However, the views of the Canon Law Commission are not shared by all. For example, the former Archbishop believed that there was a further qualification for canonical fitness, namely, that the person be a male person. In the course of the election of the present Archbishop there was a country diocesan who believed that he would be required to certify as to more than the age, baptism and orders of a person not in bishop's orders elected as Archbishop. No formal opinion has been expressed on the meaning of "canonical fitness" by the Appellate Tribunal. If the matter became an issue, the Committee expects that the views of the former Archbishop would not be upheld."

8. The Archbishop has advised Standing Committee that if the Synod did again assent to the Canon and the Bill, the Archbishop would be inclined to assent to the ordinance.

9. Clause 3 of the bill has been inserted to make it clear that in assenting to the Canon and the Bill, the Synod is not intending to legislate in any way on the issues of the ordination of women as priests or consecration of women as bishops. This is consistent with resolution 10/93 which, in part, recommended a moratorium on the issue of the ordination of women to the priesthood until at least the 44th Synod.

**Recommendation**

10. The Standing Committee recommends that the Synod pass the Bill.

For and on behalf of the Standing Committee

MARK PAYNE  
*Legal Officer*

24 August 1994