

## **General Synod - Constitution Alteration (Tribunals) Canon 1998 Assenting Ordinance 2002**

### **Explanatory Statement**

#### **Introduction**

1. The Constitution Alteration (Tribunals) Amendment Canon 2001 (the "amending canon") amends the Constitution Alteration (Tribunals) Canon 1998 (the "1998 Canon") in response, at least in part, to our Synod declining to assent to the 1998 Canon.
2. Section 54(2) of the Constitution of the Anglican Church of Australia provides that a diocesan tribunal shall, in respect of a person licensed by the bishop of the diocese, or any other person in holy orders resident in the diocese, have jurisdiction to hear and determine charges of breaches of faith ritual ceremonial or discipline and of such offences as may be specified by any canon, ordinance or rule. The Constitution is printed on pages 4 to 34 inclusive of *Acts, Ordinances & Regulations (2002 Edition)*.
3. The 1998 Canon sought to amend section 54(2) to extend the jurisdiction of the diocesan tribunal to hear charges against a member of the clergy if -
  - (a) the act of the member of clergy which gave rise to the charge occurred in the diocese;
  - (b) the member of clergy was licensed by the bishop of the diocese or was resident in the diocese within 2 years before the charge was laid; or
  - (c) the member of clergy is imprisoned as a convicted person at the time the charge was laid but, within 2 years before such imprisonment, was licensed by the bishop of the diocese or was ordinarily resident therein.
4. The 1998 Canon also proposes to amend section 62 of the Constitution to provide for the admission of a conviction and transcripts of criminal proceedings as evidence in proceedings before a tribunal.

#### **Extension of jurisdiction**

5. Our Synod objected to the extension of jurisdiction of the diocesan tribunal proposed under the 1998 Canon on the basis that it could prevent otherwise unexceptional ministry in other dioceses and requested that the Standing Committee prepare a report on the matter. In its report, the Standing Committee considered that the essential problem with the 1998 Canon was that it failed to deal adequately with the question of jurisdiction of bishops as regards recommendations made by a tribunal under the extended jurisdiction.

6. The amending canon deals with the objection raised by our Synod by limiting the extended jurisdiction to deal only with charges with an offence for unchastity, sexual misconduct or criminal offences that are punishable by imprisonment for 12 months or more.

7. The amending canon deals with the problem concerning the jurisdiction of bishops by including a new sub-section 54(2B) in the Constitution. This requires that where a person has been found guilty of an offence by Diocesan Tribunal under the extended jurisdiction, the bishop of that diocese is to consult with the bishop of the diocese by whom the person is licensed or in whom the person resides regarding the penalty to be imposed and that no penalty may be imposed unless the latter bishop expresses concurrence with that penalty.

8. Under section 67(1)(c) of the Constitution, neither the 1998 Canon nor the amending canon will come into effect unless 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.

#### **Recommendation**

9. The Standing Committee recommends that the Synod assent to both the 1998 Canon and the amending canon with the proviso that the ordinance assenting to these canons should commence at the time these canons would come into effect but for the commencement of the ordinance. The proviso is considered necessary to avoid a situation whereby the 1998 Canon but not the amending canon comes into effect.

For and on behalf of the Standing Committee

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*Legal Officer*

17 June 2002