

General Synod – Holy Orders (Removal from Exercise of Ministry) Canon 2017 Adopting Ordinance 2017

Explanatory Report

Key Points

- The Canon will replace the *Relinquishment of Holy Orders Ordinance 1994* in providing for the relinquishment of or deposition from Holy Orders.
- The Canon will allow a partial relinquishment of or deposition from orders, and thereby gives greater flexibility. For example, a person could be prohibited from functioning as a bishop but not as a presbyter or deacon, or prohibited from functioning as a presbyter but not as a deacon.

Purpose of the bill

1. The purpose of the bill for the *General Synod – Holy Orders (Removal from Exercise of Ministry) Canon 2017 Adopting Ordinance 2017* (“the Bill”) is to make provision for the relinquishment of and deposition from Holy Orders.

Recommendations

2. That Synod receive this report.
3. That Synod pass the Bill as an ordinance of the Synod.

Evidence Given

4. The evidence for this Bill is set out in the explanatory memorandum that was provided to the General Synod. The Explanatory Memorandum is included as an Appendix to this report. The “Doctrine Commission” and “Standing Committee” referred to in the Appendix are bodies of the General Synod, not bodies of our Diocese.

5. The reports of the Doctrine Commission of the General Synod in relation to deposition from Holy Orders that is referred to in the explanatory memorandum can be accessed online on the [Synod this year](#) page of SDS’s website (www.sds.asn.au).

6. In 1994, our Synod passed the *Relinquishment of Holy Orders Ordinance 1994* (the “1994 Ordinance”). Subsequently, in 2004, the General Synod passed the *Holy Orders Relinquishment and Deposition Canon 2004* (“2004 Canon”). The 2004 Canon was adopted by our Synod by ordinance in 2005 and the operation of the 1994 Ordinance was suspended. The explanatory statement for the adopting ordinance indicated that there was “merit in having national uniformity in this area”. In 2011, our Synod excluded the 2004 Canon and reinstated the 1994 Ordinance.

7. The 2004 Canon was excluded because it required the Archbishop to be satisfied that the person is not the subject of any information, complaint or charge concerning their conduct or fitness to hold office. The provision would appear to have been intended to prevent a person relinquishing their Holy Orders preemptively in order to avoid a professional standards process in relation to their conduct. However the provision meant that relinquishment could not occur in a context where a person admitted the charges against them and was prepared to relinquish their Holy Orders as one of the agreed outcomes from a professional standards process. It meant that such a person could only be deposed from Holy Orders following a recommendation from the Diocesan Tribunal. The 1994 Ordinance was therefore reinstated, with further amendments, to enable relinquishments in the context of a professional standards process where the misconduct had been disclosed and the proceedings were at an end, but for the relinquishment.

8. The Bill includes a materially similar provision to the problematic provision in the 2004 Canon. This clause, subclause 3(2), is as follows:

Before giving consent under sub-section (1)(e)(ii), the relevant bishop must be satisfied that the person is not currently the subject of any information, complaint or charge in this Church (including in any diocese) concerning his or her conduct or fitness to hold office.

9. An amendment was proposed to the mover of the Canon prior to General Synod to insert at the end of the subclause the words “unless the relinquishment of orders would conclude any such process”. The mover did not accept the amendment. The amendment was not pursued on the floor of General Synod because there is a practical solution. Subclause 3(2) only prevents the Archbishop consenting to a relinquishment while there is an ongoing professional standards process. It does not prevent a professional standards committee (or other professional standards body) recommending that a person relinquish their Holy Orders by completing and signing the instrument of voluntary relinquishment. If the person provides the completed instrument, and also

accepts and complies with all other recommendations of the PSC (or other body), the person will at that time no longer be “currently the subject” of a professional standards process because the complaint will have been finally dealt with. The Archbishop could then sign the instrument and the relinquishment would take effect.

10. The main reason for adopting the Canon in place of the 1994 Ordinance is that it permits a partial relinquishment or deposition of orders, as opposed to all orders, and thereby allows greater flexibility. For example, a person could be prohibited from functioning as a bishop but not as a presbyter or deacon, or prohibited from functioning as a presbyter but not as a deacon.

11. The Canon affects ritual and ceremonial, and would have been a special bill for the purposes of section 28 of the 1961 Constitution, except that at least three-quarters of the members of each House of General Synod otherwise determined. It has therefore taken effect as a canon of the General Synod. However the Canon is deemed by paragraph (a) of s 30 of the Constitution to affect the order and good government of the Church and therefore does not to come into force in a diocese unless and until that diocese by ordinance adopts it.

For and on behalf of the Standing Committee

ROBERT WICKS

Diocesan Secretary

18 September 2017

Holy Orders (Removal from Exercise of Ministry) Canon 2017

Explanatory Memorandum

General Background

1. The Doctrine Commission in a report to the Standing Committee of General Synod considered the nature and scope of what is referred to as deposition from Holy Orders.
2. As a result of that report it became clear that the Holy Orders Relinquishment and Deposition Canon 2004 needed to be reconsidered and rewritten. Three areas in particular needed to be addressed clearly and consistently.
 - (a) The limit of what any process can achieve is to remove a cleric from the *exercise of Holy Orders*.
 - (b) Deposition in English canon law (and therefore as used in our Constitution) can be only from the exercise of *all* orders; however, the Constitution also refers to prohibition from functioning, and that sentence can include prohibition from functioning in some only orders of ministry.
 - (c) Allowing both voluntary relinquishment and disciplinary removal to be from only some of the offices of Bishop, Priest and Deacon (although only in descending order, as it were).
3. The new bill is based on the 2004 Canon, and substantially preserves many of its provisions. The Standing Committee decided that consideration of this proposal by the General Synod would be facilitated by having it presented in the form of a new Canon rather than as an amending Bill.
4. The option of voluntary deposition in the present (2004) Canon has been removed, as there appears to be no circumstances in which it differs from voluntary relinquishment.

Status of this bill and canon

5. This canon concerns the discipline of the church and is therefore a special bill for the purposes of section 28 of the Constitution. Unless the General Synod otherwise determines, it will therefore become a provisional canon. By section 30 of the Constitution, the canon once made will not come into force in any diocese unless and until the diocese by ordinance adopts it.

Notes on Individual Clauses

Clause 1 contains the title of the Canon.

Clause 2 defines the words and expressions used in the Canon.

“deposition” is defined to refer to the removal of the right to exercise Holy Orders, and to refer to all of those orders.

“national register” has the same meaning as in the present Canon.

“person in Holy Orders” now means not only a person ordained in this church, but also a person received into an order of ministry of this church.

“relevant bishop” for a priest or deacon means the Diocesan bishop of the diocese in which the clerk is licensed, and, for a priest or deacon who is unlicensed, the Diocesan bishop of the diocese in which they reside. In the case of a person who is a bishop, the relevant bishop is the Metropolitan of the Province in which the bishop is a Diocesan bishop or resides, with special provision made for bishops in extraprovincial dioceses and for Metropolitans and the Primate.

“relinquishment” means the voluntary cessation of the exercise of one or more of the orders of ministry.

“tribunal” has the same meaning as in the present Canon, being a tribunal established under Chapter IX of the Constitution or by diocesan legislation.

Further provisions extend the meaning of Diocesan bishop to include the administrator of a Diocese pro tempore; and define **“order of ministry”** to be a reference to the Holy Order of bishop, of priest or of deacon.

Clause 3 provides that a bishop may relinquish the order of bishop, or the order of bishop and priest, or the orders of bishop, priest and deacon; a priest

may relinquish the order of priest, or the orders of priest and deacon;
and a deacon may relinquish the order of deacon. This is done by executing an instrument to that effect that is endorsed with the consent of the bishop of the last diocese in which the person held a license (if that is not the diocese in which she or he now resides) and with the consent of the relevant bishop. That consent cannot be given if the person is currently the subject of a disciplinary investigation or charge.

- Clause 4 allows for relinquishment to take place in a liturgical context.
- Clause 5 sets out the options available for the sentence of prohibition from functioning. This is the first time a Canon of General Synod has sought to do this.
- The options allow for infinite mixing and matching, covering some or all orders of ministry, conditions, limited or unlimited periods of time, and different roles, places and circumstances. For example, a prohibition could be from the exercise of any order of ministry permanently in Diocese X, from the exercise of the order of bishop in any Diocese, and from the exercise of the order of priest as the incumbent or priest in charge of a parish for the next five years.
- Sub-clause (2) makes it clear that a permanent prohibition on the exercise of all orders of ministry must be by deposition.
- Sub-clause (3) provides that effect is given to such a sentence by an instrument in the form of Schedule 2.
- Clause 6 provides that deposition following the sentence of a tribunal is effected by the form in Schedule 3.
- Clause 7 provides that any of the instruments made under this Canon must be registered in the registry of the relevant bishop and of the diocese(s) in or for which the person was ordained, and registered in the national register.
- Clause 8 provides that the bishop executing an instrument must also give notice of it, and of the reasons for it, to such persons as the bishop considers necessary.
- Clause 9 provides that a prohibition from functioning has effect according to what is in it, and reinforces that by providing that the person prohibited must not act inconsistently with the prohibition.
- Clause 10 provides that a person who has relinquished the exercise of some orders of ministry must not act inconsistently with the terms of that relinquishment.
- Clause 11 provides that a person who has relinquished or been deposed from the exercise of all orders of ministry must not act or present himself or herself as in any way as a person in Holy Orders.
- Clause 12 provides for a process by which a person who has relinquished the exercise of some or all orders of ministry may seek to have that relinquishment revoked.
- Clause 13 provides that clauses 10 and 11 do not apply to a person whose relinquishment of orders has been revoked.
- Clause 14 creates offences where a person who has relinquished an order of ministry holds out that the person continues to exercise that order, or where a person who has been deposed holds himself or herself out to be a member of the clergy.
- Clause 15 provides that Canon 76 of the Canons of 1603 has no effect. Although it is arguable that this is unnecessary given that the 2004 Canon has already provided to that effect, it is considered helpful to carry that provision forward into the current Canon.
- Clause 16 repeals the 2004 Canon.

- Clause 17 states that the Canon affects the order and good government of this Church within a diocese and does not come into force in a diocese unless and until the diocese adopts this canon by ordinance of the synod of the diocese.
- Schedule 1 contains the instruments relevant to the relinquishment of the exercise of one or more orders of ministry.
- Schedule 2 contains the instruments necessary following the sentence of a tribunal that include prohibition from functioning.
- Schedule 3 contains the instruments relevant to deposition.
- Schedule 4 contains the forms of notice consequence on relinquishment, prohibition from functioning or deposition.