

## General Synod – Offences Amendment Canon 2017 Adopting Ordinance 2017

### Explanatory Report

#### Key Points

- The primary effect of the Canon is to insert a list of offences in the *Offences Canon 1962* for former diocesan bishops which can be dealt with by the Special Tribunal. The amendments are necessary due to jurisdictional limitations on the capacity for the Special Tribunal to hear charges concerning former diocesan bishops.
- The Canon also expands the current list of offences in the *Offences Canon 1962* to include child abuse and failure without reasonable excuse to comply with the laws of the Commonwealth or a State or Territory requiring the reporting of child abuse to the police or other authority.
- A diocese also has power to specify offences by ordinance, which the Diocese of Sydney has done through the *Offences Ordinance 1962*. The list of offences in our Diocese is broader than those set out in the *Offences Canon 1962*.

#### Purpose of the bill

1. The primary purpose of the bill for the *General Synod – Offences Amendment Canon 2017 Adopting Ordinance 2017* (“the Bill”) is to set out offences in the principal canon for former diocesan bishops which can be dealt with by the Special Tribunal.

#### 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 “Synod” referred to in the Appendix is the General Synod.

5. The Canon affects discipline, 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 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

*Offences Amendment Canon 2017**Explanatory Memorandum**General Background*

4. The primary purpose of this bill is to insert section 2A after section 2 of the Offences Canon 1962 (the principal canon) that will list the offences that can apply to a former member of the House of Bishops or former bishop assistant to the Primate in the Primate's capacity as the Primate (assistant to the Primate) and be dealt with by the Special Tribunal, when the jurisdiction of the Special Tribunal is expanded to deal with charges against such former bishops confined to conduct in relation to child protection matters that was committed while a member of the House of Bishops or assistant to the Primate.

5. Corresponding amendments to both sections 1 and 2 of the principal canon are also proposed which will insert new offences of child abuse (as defined in the National Register Canon 2007) and failure without reasonable excuse to comply with the laws of the Commonwealth or a State or Territory requiring the reporting of child abuse to the police or other authority. In addition, it is proposed to add an additional offence to section 2 that in the case of a bishop who is a member of the House of Bishops or an assistant to the Primate covers failure to comply with the direction of the Episcopal Standards Board or a like Board established under an ordinance of a provincial synod or diocesan synod dealing with the fitness of the bishop for office.

6. On the basis this bill affects the discipline of the church (as defined in section 74(9)(a) of the Constitution), the procedure for a special bill set out in section 28 of the Constitution must be followed, unless the synod by votes of at least three-fourths of the members present in each house decides that it need not proceed as a special bill. Even if the Synod votes that the bill not proceed as a special bill, section 30(a) of the Constitution applies. Any canon affecting the discipline of the church is deemed pursuant to section 30(a) to affect the order and good government of the church within a diocese and will not come into force in any diocese unless and until the diocese by ordinance adopts the canon. As there will be some delay before the canon takes effect in a diocese, it is proposed the new offences apply to conduct committed after the date this canon is passed by the Synod. It will therefore only have retrospective effect to that date.

*Notes on Clauses*

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| Clause 1 | contains the title of the canon.   |
| Clause 2 | provides the principal canon is the Offences Canon 1962.   |
| Clause 3 | inserts two new offences in the list of offences in section 1 of the principal canon and three new offences in the list of offences in section 2 of the principal canon. The amendment to section 1 will enable a charge of either child abuse or wilful or reckless failure to comply with the law of the Commonwealth or a State or Territory requiring the reporting of child abuse to the police or other authority to be brought in a diocesan tribunal or a provincial tribunal against a member of the clergy resident in the diocese. The amendment to section 2 will enable like charges to be brought in the Special Tribunal against any current member of the House of Bishops or assistant to the Primate, but in addition inserts an additional charge for failure to comply with the direction of the Episcopal Standards Board established under an ordinance or provincial synod or diocesan synod for dealing with the fitness of a bishop to hold office or to be or remain in Holy Orders. |
| Clause 4 | inserts the reference to paragraphs (a) and (b) before section 56(6) where it occurs for the second time in section 2 of the principal canon to clarify that section 2 of the principal canon applies to any current member of the House of Bishops or assistant to the Primate. This amendment is essential if the Constitution (Jurisdiction of Special Tribunal) Amendment Canon 2017 is passed.  |
| Clause 5 | inserts sections 2A and 2B after section 2 of the principal canon. Section 2A provides for the jurisdiction of the Special Tribunal in respect of any former member of the House of Bishops or assistant to the Primate in respect of the offences listed in the section that relate to child protection and are limited to offences committed while a member of the House of Bishops or assistant to the Primate. Section 2B provides that in the principal canon, unless the context otherwise requires, <b>child abuse</b> has the same meaning as in the National Register Canon 2007.   |

- Clause 6 inserts a new section 4 in the principal canon that provides that the offences added to the principal canon by this canon apply to conduct committed after the date this canon was passed.
- Clause 7 states the provisions of the canon affect the order and good government of the church within a diocese and do not come into force in a diocese unless and until the diocese by ordinance adopts the canon.