

General Synod – Offences Canon Amendment Canon 1998 Adopting Ordinance 1998

Explanatory Statement

Introduction

1. Under section 54(2) of the Constitution of the Anglican Church of Australia (such Constitution being printed on pages 122 to 151 inclusive of *The Seventh Handbook*) a diocesan tribunal has in respect of a person licensed by the bishop of the diocese, or any person in holy orders resident in the diocese, jurisdiction to hear and determine charges of breaches of faith ritual ceremonial or discipline and of such other offences as may be specified by canon of the General Synod. Under section 55(3) a provincial tribunal has similar jurisdiction, on the terms set out in that section, in relation to a person licensed by the bishop of a diocese within the province.

2. Under section 56(2) of the Constitution the Special Tribunal has jurisdiction to hear and determine charges against any member of the House of Bishops of breaches of faith ritual ceremonial or discipline and of such offences as may be prescribed by canon of the General Synod.

3. The Offences Canon 1962 (the "Canon") specifies offences for the purposes of sections 54, 55 and 56 of the Constitution. By section 1 of the Canon a diocesan tribunal and a provincial tribunal have jurisdiction to hear and determine charges made in respect of the following offences alleged to have been committed by persons licensed by the bishop of a diocese and by persons in holy orders resident in the diocese -

- (a) unchastity;
- (b) drunkenness;
- (c) habitual and wilful neglect of ministerial duty after written admonition in respect thereof by the bishop;
- (d) wilful failure to pay just debts;
- (e) conduct disgraceful in a clergyman and productive or likely to be productive of scandal or evil report;
- (f) any other offence prescribed by an ordinance of the synod of a diocese.

4. By section 2 of the Offences Canon 1962 the Special Tribunal has jurisdiction to hear and determine charges against any member of the House of Bishops made in respect of the following offences -

- (a) unchastity;
- (b) drunkenness;
- (c) wilful failure to pay just debts;
- (d) conduct disgraceful in a clergyman and productive or likely to be productive or scandal or evil report;
- (e) wilful violation of the Constitution or of the canons made thereunder or of the ordinances of the provincial synod or of the diocesan synod;
- (f) any conduct involving wilful and habitual disregard of his consecration vows.

5. The Offences Canon 1962 was adopted by the Sydney Synod in 1962 and subsequent amendments thereto have also been adopted.

Widening of Jurisdiction of Tribunals

6. Under section 1 of the Canon the jurisdiction given to a diocesan tribunal and a provincial tribunal is narrower than that which may be given under sections 54(2) and 55(3) of the Constitution. By section 1 jurisdiction exists if the offence was committed by the person charged after he or she was licensed by the bishop of the diocese (in the case of both tribunals) or he or she was resident in the diocese (in the case of

a diocesan tribunal). Under sections 54(2) and 55(3) the jurisdiction may extend to an offence committed by the person before or after he or she was licensed by the bishop of the diocese (in the case of both tribunals) or he or she was resident in the diocese (in the case of a diocesan tribunal).

7. Currently, the effect of section 1 is that a member of the clergy can escape all discipline for an offence committed while licensed by the bishop of a diocese or while resident in that diocese by, where applicable, resigning from the office for which the licence was held and moving to another diocese. In these circumstances the member of the clergy will not be subject to the jurisdiction of the diocesan tribunal of either the diocese from whose bishop the licence was held or in which he or she was resident or the diocese from whose bishop a licence is currently held or in which he or she is a resident.

8. The Amending Canon amends section 1 of the Canon to give the diocesan tribunal jurisdiction to hear and determine charges in respect of offences alleged to have been committed by a person who, at the time the charge is preferred, is licensed by the bishop of the diocese or is in holy orders resident in the diocese. This will overcome the problem of a member of the clergy escaping jurisdiction in the circumstances set out in item 7 above. The jurisdiction of a provincial tribunal will be similarly widened, subject to the terms of section 55(3) of the Constitution.

Widening of Offences

9. In relation to both a member of the clergy and a bishop the Canon prescribes that the relevant tribunal has jurisdiction in relation to the offence of "conduct disgraceful in clergyman and productive or likely to be productive of scandal or evil report". The scope of this offence is limited in 2 respects -

- (a) first, the disgraceful conduct must have occurred after the ordination of the member of the clergy; and
- (b) secondly, the disgraceful conduct must be productive or likely to be productive of scandal or evil report.

10. These limitations mean that the offence does not cover particular types of disgraceful conduct which include, but are not confined to, the sexual abuse of children. All right thinking members of the Church would regard the sexual abuse of a child by a member of the clergy occurring prior to ordination as bearing upon this or her present fitness to be a member of the clergy and as requiring his or her discipline. Even where the sexual abuse of a child occurs after ordination it will often not be productive or likely to be productive of scandal or evil report before the charge is made because the member of the clergy will have by threat, inducement or intimidation persuaded the child not to reveal the sexual abuse. The consequence of this offence containing these limitations is that in each of these situations there is no offence under section 1 of the Canon, except in some circumstances unchastity, with which the member of the clergy could be charged.

11. The Amendment Canon omits the offence of "conduct disgraceful in a clergyman and productive or likely to be productive of scandal or evil report" and inserts the following ground of offence in its place -

"conduct, whenever occurring, -

- (a) which would be disgraceful if committed by a member of the clergy; and
- (b) which at the time the charge is preferred is productive, or if known publicly would be productive, of scandal or evil report."

12. The new offence of disgraceful conduct whenever occurring which renders a person unfit now to be a member of the clergy focuses on the present fitness of a person to be a member of the clergy by reason of his or her disgraceful conduct. This offence does not suffer from the same limitations as the existing offence of conduct disgraceful in a clergyman and productive or likely to be productive of scandal or evil report. The amendment of the Canon to include this offence has the following benefits -

- (a) first, a member of the clergy who has engaged in disgraceful conduct that renders him or her unfit now to be a member of the clergy can be charged with an offence, whenever the disgraceful conduct occurred and whether or not the disgraceful conduct has been productive or is likely to be productive of scandal or evil report;
- (b) secondly, there is appropriate protection for members of the Church and members of the public who have dealings with members of the clergy and members of the House of Bishops.

13. The Amending Canon must be adopted by the Synod by ordinance before it has effect in Sydney. The bill is promoted to enable the Synod to adopt the Amending Canon.

Recommendation

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

For and on behalf of the Standing Committee

MARK PAYNE
Diocesan Secretary

14 August 1998