

## General Synod – The Use of the Surplice Canon 1977 Amendment Ordinance 1998

### Explanatory Statement

#### Introduction

1. The Use of The Surplice Canon 1977 (the "Surplice Canon") allows the synod of a diocese, by ordinance, to prescribe the circumstances when a minister may be relieved of the obligation to use a surplice during the minister's ministrations.

2. By the General Synod - The Use of the Surplice Canon 1977 Adopting Ordinance 1977 (the "1977 Ordinance") the Sydney Synod adopted the Surplice Canon and, using the powers in that canon, made the following rules (set out in clauses 2 and 3 of the 1977 Ordinance) -

"2. A minister of the Anglican Church of Australia in the Diocese of Sydney need not wear a surplice while conducting a service -

- (a) in a hospital,
- (b) in a private house,
- (c) in a place which is not licensed for public worship, or
- (d) in a place which is licensed for public worship in such circumstances as may be provided in accordance with the terms hereof.

3. (1) A minister need not, in a place licensed for public worship in which there is customarily conducted more than one service each Sunday, wear a surplice while conducting one of such services each Sunday.

(2) A minister need not, in a place licensed for public worship in which there is customarily conducted only one service each Sunday, wear a surplice while conducting one of such services in each calendar month.

(3) In the course of making any determination as to the service or services at which a minister need not wear a surplice as aforesaid, the rector or minister concerned shall consult with the parish council of the parochial unit in which the church, where the service is or services are to be held, is situated.

(4) The provisions of this clause shall not apply to any service where a bishop is a minister thereof unless that bishop gives his approval for the provisions of this clause to apply.

(5) The provisions of this clause shall apply until 31 December 1998."

3. By reason of clause 3(5) of the 1977 Ordinance the Synod should review the rules concerning relief from the use of the surplice prior to 31 December 1998.

#### Review of the 1977 Ordinance

4. This is not the first time that it has been necessary to reconsider the rules concerning relief from the use of the surplice. When clause 3 was originally inserted into the 1977 Ordinance in 1985, the review date was 31 October 1988. Subsequently, the review date was extended to 31 December 1993, to January 1997 and then to 31 December 1998. In part, these extensions were made in anticipation of further General Synod legislation about clerical vesture. That legislation, in the form of the Canon concerning Vesture of Ministers 1992 (the "Vesture Canon"), has now been passed. That canon repeals the existing rules concerning clerical vesture in those dioceses which adopt the canon, including those in The Use of the Surplice Canon 1977, and substitutes new rules.

5. In 1997 the Standing Committee referred the Vesture Canon to a committee for its view about whether it would be acceptable to most clergy and laity in the Diocese. In its report, printed on pages 364 to 385 inclusive of the 1998 Yearbook, the committee said it thought the Vesture Canon would have little chance of being adopted by the Synod. Accordingly the Standing Committee is not recommending that the Synod adopt the Vesture Canon. In Sydney, the Surplice Canon remains a source of legislative authority.

6. The Standing Committee has considered options for the review of the 1977 Ordinance and recommends the proposals contained in the bill for the General Synod - The Use of the Surplice Canon 1977 Amendment Ordinance 1998. The bill proposes -

- (a) preserving the existing rules for dispensing with the use of the surplice in a church (while making it clear that those rules also apply in the Cathedral), those rules being -
  - (i) in a church in which there is customarily conducted more than one service each Sunday, a minister need not wear a surplice while conducting one of such services each Sunday (provided there has been prior consultation with the parish council and churchwardens);
  - (ii) in a church in which there is customarily conducted only one service each Sunday, a minister need not wear a surplice while conducting one of such services in each calendar month (provided there has been such consultation);
- (b) making new rules to allow a minister to dispense with the use of the surplice in a church more frequently than is permitted by the existing rules with the approval of a vestry meeting of the church (or, in the case of the Cathedral, a meeting of the congregation of the Cathedral);
- (c) authorising a minister to dispense with the use of a surplice while conducting a service in a place licensed for public worship, not being a church (as defined in clause 2 of the Church Administration Ordinance 1990) or the Cathedral; and
- (d) repealing canons 17, 24, 25, 58 and 74 of the Canons of 1603 to the extent that the Synod has power to do so while restating, as new clause 1A, the provisions requiring the use of the surplice presently found in canon 58.

7. The remainder of this report considers questions which Synod members may have concerning the bill.

**Does the bill affect the rules which prohibit the use of certain clerical dress?**

8. The use of certain clerical dress is currently prohibited by clause 2 of the Announcements of Divine Service and Clerical Vestures Ordinance 1949 which provides, in part -

"No minister when celebrating Holy Communion shall wear the alb the chasuble the dalmatic the tunicle."

9. The bill does not affect the continued operation of the prohibition in clause 2 of the 1949 Ordinance.

**Will the bill give the minister power to dispense with the use of the surplice in a church without consultation/approval?**

10. In answering this question, a distinction needs to be drawn between the existing rules (which the bill proposes to preserve) and the new rules which allow relief from the use of the surplice more frequently than is currently permitted.

**Existing Rules**

11. By existing clause 3(3) of the 1977 Ordinance a minister may only dispense with the use of the surplice in a church on the terms permitted by the 1977 Ordinance after consulting the parish council, if any, and the churchwardens of the church. By clause 6 of the 1977 Ordinance the minister must *have due regard* to the occasion and the congregation concerned before exercising relief.

12. In relation to these provisions the following points should be noted-

- (a) While a minister must consult with the parish council, if any, and the churchwardens he or she does not need their consent for dispensing with the use of the surplice. If a minister completely fails to consult or only goes through a show of consulting the minister's decision to dispense with the use of the surplice would be invalid.
- (b) In 1988 our Legal Committee gave an opinion about the meaning of the phrase "have due regard" where used in clause 6 of the 1977 Ordinance. The Committee said -

"The phrase 'shall have regard' is one which has been authoritatively construed by the High Court to mean a direction to take the relevant matters into account 'and to give weight to them as a fundamental element in making (his) determination' (see the judgement of Mason J in *R v Hunt; ex parte Sean Investments Pty Ltd* (1979) 25 ALR 497, 504). The word 'due' really only emphasises that the regard has to be what is properly and appropriate in all the circumstances, (see eg *Re The Algol* (1918) p7, 12)."

- (c) Having regard to the meaning of the phrase "having due regard" the Legal Committee considered that a minister's decision to dispense with the use of the surplice would be void if -

- (i) the minister came to a decision to dispense with the use of the surplice that no reasonable person could have reached on the material before the minister;
  - (ii) he failed, or only went through a show of taking into account the matters referred to in clause 6; or
  - (iii) the minister took other extraneous and irrelevant considerations into account and based his or her decision on them.
- (d) The Legal Committee considered that a disputes committee under clause 7 of the 1977 Ordinance has jurisdiction to determine if the requirements of clauses 3(3) and 6 have been satisfied.

13. Accordingly, under the existing rules in the 1977 Ordinance (which are to be preserved), the minister must consult and have regard to all that is proper and appropriate in the circumstances when deciding whether to dispense with the use of the surplice.

#### **New Rules**

14. The new rules allow a minister to dispense with the use of the surplice while conducting a service in a church more frequently than is permitted by the existing rules only where a vestry meeting of the church has given its approval or, in the case of the Cathedral, a meeting of the Cathedral has given its approval.

#### **If a minister dispenses with the use of the surplice what standard of dress must he or she comply with?**

15. Under clause 6 of the 1977 Ordinance a minister who dispenses with the use of the surplice must *have due regard* to the appropriateness of his dress when conducting services. As was stated in 12 above our Legal Committee considers that the requirement to "have due regard" means that the minister must take into account all proper and appropriate considerations in determining the appropriateness of his dress.

16. The bill proposes that clause 6 be reworded so as to state, along with other requirements, that a minister may only dispense with the use of the surplice if his or her dress is appropriate having regard to the occasion and the congregation concerned. Arguably, this is only a slightly stronger statement of what is the present position.

#### **Does the bill affect the operation of Canons 17, 24, 25, 58 and 74 of the Canons of 1603?**

17. The bill includes a provision which repeals canons 17, 24, 25, 58 and 74 of the Canons of 1603 to the extent that the Synod has power to repeal. There are divergent views as to whether Synod has power to repeal those Canons.

18. In any event, if the Synod does not have power to repeal those canons the bill authorises non-compliance with such provisions of those canons which require the use of a surplice, on the terms set out in the bill.

19. The terms of the canons are as follows -

#### **"17. Students in Colleges to wear Surplices in time of Divine Service**

All masters and fellows of colleges or halls, and all the scholars and students in either of the universities, shall, in their churches and chapels, upon all Sundays, holy-days, and their eves, at the time of divine service, wear surplices, according to the order of the Church of England: and such as are graduates shall agreeably wear with their surplices such hoods as do severally appertain unto their degrees.

#### **24. Copes to be worn in Cathedral Churches by those that administer the Communion**

In all cathedral and collegiate churches, the holy communion shall be administered upon principal feast-days, sometimes by the bishop, if he be present, and sometimes by the dean, and at sometimes by a canon or prebendary, the principal minister using a decent cope, and being assisted with the gospeller and epistler agreeably, according to the advertisements published anno 7 Eliz. The said communion to be administered at such times, and with such limitation, as is specified in the Book of Common Prayer. Provided, That no such limitation by any construction shall be allowed of, but that all deans, wardens, masters, or heads of cathedral and collegiate churches, prebendaries, canons, vicars, petty canons, singing men, and all others of the foundation, shall receive the communion four times yearly at the least.

**25. *Surplices and Hoods to be worn in Cathedral Churches when there is no Communion***

In the time of divine service and prayers, in all cathedral and collegiate churches, when there is no communion, it shall be sufficient to wear surplices; saving that all deans, masters, and heads of collegiate churches, canons, and prebendaries, being graduates, shall daily, at the times both of prayer and preaching, wear with their surplices such hoods as are agreeable to their degrees.

**58. *Ministers reading Divine Service, and administering the Sacraments, to wear Surplices, and Graduates therewithal Hoods***

Every minister saying the public prayers, or ministering the sacraments, or other rites of the church, shall wear a decent and comely surplice with sleeves, to be provided at the charge of the parish. And if any question arise touching the matter, decency, or comeliness thereof, the same shall be decided by the discretion of the ordinary. Furthermore, such ministers as are graduates shall wear upon their surplices, at such times, such hoods as by the orders of universities are agreeable to their degrees, which no minister shall wear (being no graduate) under pain of suspension. Notwithstanding it shall be lawful for such ministers as are not graduates to wear upon their surplices instead of hoods, some decent tippet of black, so it be no silk.

**74. *Decency in apparel enjoined to Ministers***

The true, ancient, and flourishing Churches of Christ, being every desirous that their prelacy and clergy might be had as well in outward reverence, as otherwise regarded for the worthiness of their ministry, did think it fit, by a prescript form of decent and comely apparel, to have them known to the people, and thereby to receive the honour and estimation due to the special messengers and ministers of Almighty God: we therefore following their grave judgement, and the ancient custom of the Church of England, and hoping that in time newfangleness of apparel in some factious persons will die of itself, do constitute and appoint, That the archbishops and bishops shall not intermit to use the accustomed apparel of their degrees. Likewise all deans, masters of colleges, archdeacons, and prebendaries, in cathedral and collegiate churches, (being priests or deacons), doctors in divinity, law, and physic, bachelors in divinity, masters of arts, and bachelors of law, having any ecclesiastical living, shall usually wear gowns with standing collars, and sleeves strait at the hands, or wide sleeves, as is used in the universities, with hoods or tippets of silk or sarcenet, and square caps. And that all other ministers admitted or to be admitted into that function shall also usually wear the like apparel as is aforesaid, except tippets only. We do further in like manner ordain, That all the said ecclesiastical persons above mentioned shall usually wear in their journeys cloaks with sleeves, commonly called priests' cloaks, without guards, welts, long buttons, or cuts. And no ecclesiastical person shall wear any coif or wrought nightcap, but only plain nightcaps of black silk, satin, or velvet.. In all which particulars concerning the apparel here prescribed, our meaning is not to attribute any holiness or special worthiness to the said garments, but for decency, gravity, and order, as is before specified. In private houses, and in their studies, the said persons ecclesiastical may use any comely and scholar-like apparel, provided that it be not cut or pinkt; and that in public they go not in their doublet and hose, without coats or cassocks; and that they wear not any light-coloured stockings. Likewise poor beneficed men and curates (not being able to provide themselves long gowns) may go in short gowns of the fashion aforesaid."

**Recommendation**

20. 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