

General Synod 1995 Legislation

(A report from the Standing Committee.)

| <i>Contents</i> | <i>Item</i> |
|--|-------------|
| Introduction | 1 |
| Canons Passed by the General Synod in 1995 | 3 |
| Canons in Force | 4 |
| Canons for Adoption | 6 |
| Canons for Assent | 10 |

Introduction

1. Under the constitution ("Constitution") of the Anglican Church of Australia (set out in the Schedule to the Anglican Church of Australia Constitution Act 1961 - see pages 119 to 151 inclusive of *The 7th Handbook*), the General Synod has power to make canons for the order and good government of the church. The General Synod also has power, by canon, to amend the Constitution.

2. Not all canons come into effect when they are passed. For example, where a canon affects the order and good government of the church in a diocese then, under the Constitution, the canon does not come into effect in that diocese unless the diocese, by ordinance, *adopts* the canon. Further, a canon to amend the Constitution only comes into effect if the requisite number of dioceses *assent* to the canon. In the case of certain provisions of the Constitution the canon only comes into effect if it receives *assent* from all dioceses.

Canons Passed by the General Synod in 1995

3. In 1995 the General Synod passed the following canons -

Australian College of Theology Canon 1966 Amendment Canon 1995 (No. 1 of 1995)

Defence Force Board Canon Amendment Canon 1995 (No. 2 of 1995)

Constitution of a Diocese Alteration Canon 1995 (No. 3 of 1995)

Anglican Clergy Provident Fund (Confirmation of Amendments) Canon 1995 (No. 4 of 1995)

Anglican Clergy Provident Fund Canon 1995 (No. 5 of 1995)

Long Service Leave Canon (Amendment) 1995 (No. 6 of 1995)

Allocation of Funds Canon 1995 (No. 7 of 1995)

Anglican Board of Mission Australia Canon 1995 (No. 8 of 1995)

Constitution Amndt (Table Annexed) Canon 1995 (No. 9 of 1995)

Interpretation Canon 1995 (No. 10 of 1995)

Missionary Dioceses Amendment Canon 1995 (No. 11 of 1995)

Archdeacons Canon 1995 (No. 12 of 1995)

A Prayer Book for Australia Canon 1995 (No. 13 of 1995)

Reception Canon Amendment Canon 1995 (No. 14 of 1995)

Constitution Amndt (Interpretation) Canon 1995 (No. 15 of 1995)

Financial Protection Canon 1995 (No. 16 of 1995)

Constitution Amendment (Rights of Non-Members of the General Synod) Canon 1995 (No. 17 of 1995)

Bishop (Incapacity) Canon 1995 (No. 18 of 1995)

Canon Concerning Vesture of Ministers 1992 (No. 19 of 1995)

Canons in Force

4. The Standing Committee is of the view -

- that the canons listed below do not affect the order and good government of the church in this Diocese;
- that those canons came into effect without the need for the assent or adoption of the Synod; and
- that we need take no further action on those canons.

Australian College of Theology Canon 1966 Amendment Canon 1995 (No. 1 of 1995);

Defence Force Board Canon Amendment Canon 1995 (No. 2 of 1995);

Australian Clergy Provident Fund (Confirmation of Amendments) Canon 1995 (No. 4 of 1995);

Australian Clergy Provident Fund Canon 1995 (No. 5 of 1995);

Allocation of Funds Canon 1995 (No. 7 of 1995);

2 General Synod 1995 Legislation (1996)

Anglican Board of Mission - Australia Canon 1995 (No. 8 of 1995);
Missionary Dioceses Canon Amendment Canon 1995 (No. 11 of 1995);
Financial Protection Canon 1995 (No. 16 of 1995).

5. While the *Interpretation Canon 1995* does not affect the order and good government of the church in a diocese and has come into effect without the need for assent or adoption of the Synod, the Standing Committee thinks the Synod should request that clause 8(a) of the Canon be amended: see the separate report.

Canons for Adoption

6. The *Archdeacons Canon 1995* expressly provides that it affects the order and good government of the church in a diocese and before it has effect in Sydney the Synod must, by ordinance, adopt the canon. The Standing Committee recommends that the canon be adopted: see the separate report and bill.

7. By its terms, the *Long Service Leave Canon Amendment Canon 1995* does not come into effect until the first day of January next following the receipt by the General Secretary of the General Synod of notices that the canon has been adopted by the synods of each "participating diocese". Sydney is a "participating diocese" and the Standing Committee recommends that the canon be adopted: see the separate report and bill.

8. The *Constitution of a Diocese Alternation Canon 1995*, the *Bishop (Incapacity) Canon 1995*, and the *Canon Concerning Vesture of Ministers 1992* also expressly provide that they affect the order and good government of the church in a diocese. However the Standing Committee recommends that these canons not be adopted: see the separate reports.

9. A *Prayer Book for Australia Canon 1995* and the *Reception Canon Amendment Canon 1995* also expressly provide that they affect the order and good government of a church in a diocese. The Standing Committee has no recommendation on the Prayer Book Canon but it recommends the adoption of the Reception Canon: see the separate reports and bills.

Canons for Assent

10. The *Constitution Amendment (Table Annexed) Canon 1995*, the *Constitution Amendment (Interpretation) Canon 1995*, and the *Constitution Amendment (Rights of Non-Members of the General Synod) Canon 1995* each purport to change the Constitution and, under the Constitution, will not take effect unless Sydney assents to the canons.

11. The Standing Committee recommends that assent be given to the *Constitution Amendment (Rights of Non-Members of the General Synod) Canon 1995* and the *Constitution Amendment (Table Annexed) Canon 1995*: see the separate reports and bills.

12. The *Constitution Amendment (Interpretation) Canon 1995* does, however, provide grounds for objection: see the separate report.

For and on behalf of the Standing Committee.

MARK PAYNE
Legal Officer

4 February 1997

Bishop (Incapacity) Canon 1995

(A report from the Standing Committee.)

Background

1. The Bishop (Incapacity) Canon 1995 (the "Canon"), copy attached, seeks to provide a better procedure for vacating a see when a bishop becomes incapable of fulfilling his office. The current procedure for dealing with an incapable bishop is found in an 1891 Determination of the General Synod.
2. The Canon affects the order and good government of the Church in a diocese and so does not come into effect in Sydney unless the Synod, by ordinance, adopts the Canon.

The 1891 Determination

3. Under the 1891 Determination a bishop who was mentally incapable of administering his diocese could be removed in the following circumstances -
 - (a) If a court of competent jurisdiction declared that a bishop was incapable of managing his affairs, the Primate could declare the bishop's see vacant.
 - (b) If there was no court declaration but the Primate was satisfied, upon the report of the majority of the members of the Diocesan Council, Standing Committee or the corresponding body in a diocese (accompanied and supported by 3 doctors' certificate), that there was a prima facie reason to believe that the bishop was incapable by any form of mental or cerebral disease of administering his see, the Primate could appoint 3 bishops to form a Commission of Enquiry to investigate and report and if the Commission reported that the bishop was incapable, the Primate could declare the see vacant.
4. The General Synod considers that there are "obvious difficulties" with the provisions of the 1891 Determination. In particular, the Determination does not cover the case where the bishop is unable to be persuaded to obtain a medical opinion.

Procedure in the Canon

5. The Canon provides a new procedure for dealing with the incapacity of a bishop -
 - (a) If a court, tribunal or other authority makes an order to the effect that a bishop is incapable, the Metropolitan (being the Metropolitan of the province, or where the bishop is a Metropolitan, the Primate) may declare the see vacant. However before doing so, the Metropolitan must enquire of a chancellor of a diocese, make such other enquiries as he thinks fit and consult with the Diocesan Council or the Standing Committee of the diocese concerned.
 - (b) If 3 members of the synod of a diocese consider on reasonable grounds that the bishop of the diocese may be incapable the Canon permits them to report the matter to the Metropolitan. The Metropolitan may then appoint a panel consisting of at least 3 persons, including a doctor and a lawyer, to investigate the matter and report within 2 months or such longer time as the Metropolitan allows. A copy of the report must then be sent to the bishop and, if the panel considers that there are reasonable grounds for considering that the bishop is incapable, the bishop has 21 days to respond. If the bishop does not contest the report the Metropolitan, after consulting with the Standing Committee or the Diocesan Council of the diocese concerned, may declare the see vacant.
 - (c) If the bishop contests the report, the Metropolitan must appoint a tribunal consisting of 3 persons (the chancellor of a diocese, the bishop of a diocese and a qualified medical practitioner) appointed by the Metropolitan to determine the matter. If the tribunal determines that the bishop is incapable, the bishop may appeal a question of law to a tribunal consisting of the members of the Appellate Tribunal. Subject to such appeal, the Metropolitan may declare the bishop's see vacant after consulting with the Standing Committee or Diocesan Council of the diocese concerned.
 - (d) If the panel referred to in (b) considers that there are reasonable grounds for considering that the bishop is incapable, the Metropolitan may suspend the bishop from office. The suspension, which has the effect of an absence of the bishop from the see, continues until such time as the tribunal referred to in (c) determines that the bishop is not incapable, or until the see becomes vacant, whichever first occurs.
6. The Canon makes it clear that "incapable" is limited to physical or mental incapacity which renders the bishop incapable of managing his own affairs or making reasonable judgements about his own affairs or the affairs of office.

4 General Synod 1995 Legislation (1996)

7. The Canon provides that any expenditure incurred by the Metropolitan in the administration of the Canon in relation to a bishop is to be paid or reimbursed by the bishop's diocese.

Comments

8. The procedure in the Canon is complex and except, in the most obvious cases could be expensive to administer. The procedure in a contested case is more complicated than the procedure which applies to the incapacity of clergy in this diocese under the Inefficiency and Incapacity Ordinance 1906.

9. The Standing Committee believes there should not be one test of inefficiency and incapacity for the clergy of this diocese and another, much narrower, test for the Archbishop. Further, if the procedure under the 1906 Ordinance is considered fair for clergy in this diocese it may not be fair that a more complicated procedure with appeals to outside bodies applies to the Archbishop.

10. The Select Committee appointed by the Synod to consider clerical enquiries is considering the appropriateness or otherwise of the 1906 Ordinance.

Recommendation

11. The Standing Committee recommends that the Synod defer consideration of the Canon until after receiving the report of the Select Committee appointed by the Synod to consider clerical enquiries.

For and on behalf of the Standing Committee

MARK PAYNE
Legal Officer

4 February 1997

Bishop (Incapacity) Canon 1995

A Canon to provide for the vacation of the See of a bishop incapable of fulfilling office and for other purposes.

The General Synod prescribes as follows:

Short title

1. This canon may be cited as the "Bishop (Incapacity) Canon 1995".

Definitions

2. In this canon -

"incapable", in relation to a person who is the bishop of a diocese, means -

- (a) incapable, continuously or intermittently, of managing the person's affairs ; or
- (b) by reason of a physical or mental disability of any kind, unable, continuously or intermittently, to make reasonable judgments in respect of matters relating to all or any part of the carrying out of the person's affairs or the affairs of the person's office as the bishop of the diocese;

"registrar", in relation to a diocese, means the person holding office as the chief executive officer (by whatever name called) of the registry of the bishop of the diocese, and includes a person acting in such an office;

"relevant Metropolitan", in relation to the bishop of a diocese, means -

- (a) unless paragraph (c) or (d) applies, the Metropolitan of the Province in which the diocese is situated; or
- (b) if the diocese is an extra provincial diocese, the Primate; or
- (c) if the bishop is the Metropolitan but not the Primate, the Primate; or
- (d) if the bishop is the Primate, the person who, at the relevant time, is the next most senior Metropolitan who is available, seniority being determined by the date of consecration.

Where court, tribunal or other body determines bishop incapable

3. (1) If a court, tribunal or other body established by law having authority to make such orders, makes an order an effect of which is that a person who is the bishop of a diocese is declared, determined or otherwise found to be incapable, the relevant Metropolitan may, subject to section 11, by notice in writing given to the registrar of the bishop's diocese, declare the See vacant.

(2) The relevant Metropolitan, before making a declaration under sub-section (1), shall make or cause to be made an enquiry of a chancellor of a diocese of the Anglican Church of Australia and such other enquiries as the relevant Metropolitan thinks fit.

(3) The relevant Metropolitan shall cause a copy of the notice under sub-section (1) to be given to the bishop to whom it relates, to the registrar of the relevant Metropolitan's diocese and, unless the bishop is the Primate, to the Primate.

Where suspected inability reported to relevant Metropolitan

4. If three members of the synod of a diocese consider on reasonable grounds that the bishop of the diocese may be incapable, those members may, in writing, report the matter to the relevant Metropolitan.

Relevant Metropolitan may appoint panel of inquiry

5. (1) The relevant Metropolitan, upon receiving a report under section 4, may, if the relevant Metropolitan considers it appropriate, appoint a panel to inquire into the matter the subject of the report.

(2) The panel shall consist of at least 3 persons appointed by the relevant Metropolitan, at least one of whom is a qualified medical practitioner and at least one of whom is a qualified legal practitioner.

- (3) The relevant Metropolitan shall appoint one of the members of the panel to chair the panel.

- (4) Subject to this canon, the panel shall determine its own procedure.

Authority to Disclose Information

6. This canon shall be sufficient authority from the Bishop concerned, who shall be deemed to have given such authority, for any medical practitioner who has treated the Bishop at any time in the previous 2 years to disclose information relating to the Bishop's medical condition to the panel, or the Tribunal, or any member thereof.

Report by panel

7. (1) A panel appointed under this canon shall report to the relevant Metropolitan within 2 months after being appointed or, if the relevant Metropolitan approves a longer period, within that longer period.
- (2) The relevant Metropolitan -
- (a) shall send a copy of the report of the panel to the bishop of the diocese; and
- (b) if the panel reports that it considers that there are reasonable grounds for considering that the bishop is incapable, shall, in writing, ask the bishop for a response to the report within 21 days after the bishop receives the copy.

Suspension of bishop from office

8. (1) If the panel reports that it considers that there are reasonable grounds for considering that the bishop is incapable, the relevant Metropolitan may, by notice given to the bishop, suspend the bishop from office.
- (2) The relevant Metropolitan shall cause a copy of the notice under sub-section (1) to be given to the registrar of the bishop's diocese, to the registrar of the relevant Metropolitan's diocese and, unless the bishop is the Primate, to the Primate.
- (3) The suspension -
- (a) has effect as an absence of the bishop from the See ; and
- (b) ceases to have effect -
- (i) upon a determination by a tribunal appointed under section 9 or 10 that the bishop is not incapable; or
- (ii) upon the See becoming vacant (whether or not under this canon)
- whichever first occurs.

See may be declared vacant if report not contested

9. (1) Unless the bishop of a diocese to whom a report is sent under section 6 contests the report in accordance with section 9, the relevant Metropolitan may, subject to section 11 by notice given to the bishop, declare the See vacant.
- (2) The relevant Metropolitan shall cause a copy of the notice under sub-section (1) to be given to the registrar of the bishop's diocese, to the registrar of the relevant Metropolitan's diocese and, unless the bishop is the Primate, to the Primate.

Where report of panel contested

10. (1) If the bishop of a diocese, by notice in writing given to the relevant Metropolitan within 21 days after receiving the copy of a report under section 6, contests the report, the relevant Metropolitan shall appoint a tribunal to determine the matter.
- (2) The tribunal shall consist of 3 persons appointed by the relevant Metropolitan of whom one shall be a chancellor of a diocese of the Anglican Church of Australia, who shall be president of the tribunal, one shall be a bishop of another such diocese and one shall be a qualified medical practitioner.
- (3) A person who has been concerned in any way with an investigation or report into the capacity of the bishop, or who is or has been a member of the synod of that diocese while that bishop has been the bishop of the diocese, is ineligible to be a member of a tribunal appointed under this section in relation to the bishop.
- (4) Subject to this canon, the tribunal shall determine its own procedure.

Determination by tribunal under section 9 and appeal

11. (1) The tribunal under section 9 shall determine whether or not, in its opinion, the bishop of the diocese is incapable and shall report its determination in writing to the relevant Metropolitan.
- (2) The relevant Metropolitan shall give a copy of the determination of the tribunal under section 9 to the bishop to whom it relates and to the registrar of the bishop's diocese.
- (3) The bishop may appeal, on a question of law only, from a determination of the tribunal under section 9 to a tribunal consisting of the members for the time being of the Appellate Tribunal.
- (4) Subject to this canon, the procedure of a tribunal under this section shall, so far as practicable, be the procedure of the Appellate Tribunal.
- (5) If the bishop does not, within 7 days after a copy is given to the bishop or the registrar of the bishop's diocese, whichever is the later, of a determination of the tribunal under section 9 that the bishop is

incapable, give notice in writing to the Registrar of the Appellate Tribunal of an appeal to the tribunal under this section on a question of law, the relevant Metropolitan may, subject to section 11 by notice in writing given to the bishop or the registrar of the bishop's diocese, declare the See vacant.

(6) If the bishop appeals on a question of law in accordance with sub-section (5) and the tribunal under this section, in determining the appeal, upholds the determination of the tribunal under section 9, the relevant Metropolitan may, subject to section 11 by notice in writing given to the bishop or the registrar of the bishop's diocese, declare the See vacant.

(7) The relevant Metropolitan shall cause a copy of a notice under sub-section (5) or (6) to be given to the registrar of the relevant Metropolitan's diocese and, unless the bishop is the Primate, to the Primate.

(8) Despite section 7(3), if a bishop who is suspended from office under section 7(1) appeals to a tribunal under this section, the suspension continues until -

- (a) the tribunal under this section determines that the bishop is not incapable; or
- (b) upon the See becoming vacant (whether or not under this canon), whichever first occurs.

Consultation with Diocesan Council or Standing Committee

12. Before declaring a See vacant in accordance with the provisions of this canon the relevant Metropolitan shall convene a meeting in the diocese concerned, of the members of the relevant Diocesan Council or Standing Committee in order to consult with them as to the making or implementation of any declaration of the vacancy in the See.

Reimbursement by Diocese of Expenditure

13. Any expenditure incurred by the relevant metropolitan in the administration of this Canon in relation to the Bishop of a Diocese, including expenses incurred in relation to the panel and any Tribunal shall be paid or reimbursed by that Diocese.

Canon affects order and good government

14. This canon affects the order and good government of this Church and shall not come into operation in a diocese unless and until the diocese adopts and assents to this canon by ordinance of the synod of the diocese.

Determination VI, 1891 to cease to have effect

15. The Determination of the General Synod of the Dioceses in Australia and Tasmania made on 3 October 1891 ceases to have effect in a diocese which adopts this canon.

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Canon Concerning Vesture of Ministers 1992

(A report from the Standing Committee.)

Introduction

1. The Canon Concerning Vesture of Ministers 1992 (the "Canon"), copy attached, provides new rules for the vesture to be worn by ministers when ministering in divine service. The Canon affects the order and good government of the Church in a diocese and so will not have effect in Sydney until the Synod, by ordinance, adopts the Canon. However if the Canon is adopted the present law regarding the vesture of ministers will largely cease to have effect.

Present Law

2. The following canons of 1603, in so far as they may apply in the Diocese, and ordinances of the Synod contain law concerning the vesture of ministers -

- (a) Canons numbered 17, 24, 25, 58 and 74;
- (b) the Announcements of Divine Services and Clerical Vestures Ordinance 1949; and
- (c) the General Synod - The Use of the Surplice Canon 1977 Adopting Ordinance 1977.

Canons of 1603

3. Canons numbered 17, 24, 25, 58 and 74 of the Canons of 1603, in so far as they may have had application in the Diocese, apply subject to the General Synod - The Use of the Surplice Canon 1977 Adopting Ordinance 1977.

4. Canon 17 of the 1603 Canons is in the following terms -

XVII. 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.

5. Canon 24 of the 1603 Canons is in the following terms -

XXIV. 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.

6. Canon 25 of the 1603 Canons is in the following terms -

XXV. 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.

7. Canon 58 of the 1603 Canons is in the following terms -

LVIII. 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.

8. Canon 74 of the 1603 Canons is in the following terms -

LXXIV. 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 newfangledness 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.

Announcements of Divine Services and Clerical Vestures Ordinance 1949

9. Under clause 2 of this ordinance the Synod requires that every minister below the order of Bishop 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. The clause provides that no minister when celebrating the Holy Communion shall wear the alb, the chasuble, the dalmatic, the tunicle.

10. Clause 2 of the ordinance applies subject to the General Synod - The Use of the Surplice Canon 1977 Adopting Ordinance 1977.

General Synod - The Use of the Surplice Canon 1977 Adopting Ordinance 1977

11. The Use of the Surplice Canon 1977 permits the synod of a diocese, by ordinance, to relieve a minister of his obligation to use a surplice during his ministrations.

12. By the General Synod - The Use of the Surplice Canon 1977 Adopting Ordinance 1977 the Synod adopted the canon and provided relief from the obligation to wear a surplice. Under the ordinance a minister need not wear a surplice while conducting a service in a hospital, in a private house, in a place which is not a church or in a church in accordance with the other rules.

13. The following rules apply for dispensing with the use of a surplice in a church -

- (a) Where 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.
- (b) Where in a church there is customarily only one Sunday service, a minister need not wear a surplice while conducting one of those services in each calendar month.
- (c) In the course of making a determination as to the service or services at which a minister need not wear surplice, the minister must consult with the parish council of the parochial unit in which the relevant church is situated.
- (d) The provisions in (a) to (c) do not apply to any service where a bishop is a minister thereof.

14. The ordinance also provides that where a minister proposes dispensing with a surplice, he must have due regard to the occasion and the congregation concerned before exercising that relief. The minister must also have due regard to the appropriateness of his dress when conducting services.

History of the Canon

15. The Canon Law Commission of the General Synod was charged with replacing the old law with new but recognised that the issue of clerical robes had generated great controversy. It is understood the Commission made discrete enquiries. In general terms, the middle church and representatives of Anglo-Catholic dioceses considered that clerical robes were a matter for the synod of a diocese or for the bishop or

both - with the bishop always having the final say. This position is reflected in clause 3 of the Canon. It was recognised that this would not be acceptable to evangelicals who would insist on retaining the right to wear a surplice. This is provided for in clause 4 of the Canon. However, it is understood clauses 3 and 4 did not satisfy 2 groups. At one extreme there are those who, for many years and without complaint or at least any attempt being made to stop it, wore special clothes that were not lawful and had not been approved by bishop or synod. The Commission considered that if such special clothes had been customarily worn in such circumstances, the practice should be allowed to continue subject to anything which the bishop or the synod may do to stop it. At the other extreme were those who did not wish to wear a surplice. Here the Commission allowed relief but embodied a principle in the 1603 Canons, namely, of "decency in apparel" for ministers.

16. The General Synod appears to have allowed for the Anglo-Catholic extreme but deleted the provision making allowance for the evangelical extreme. The consequence is that at all services in church buildings, the evangelical must wear either the surplice or "such standards of vesture" as may be prescribed by ordinance of the synod or the bishop. Since "standards of vesture" means something other than street clothes, and since, in clause 6 the 1977 Canon is repealed, it follows that, if the canon is adopted, until the Archbishop or the Synod prescribes a form of special robes in place of the surplice, the surplice must be worn in church on all occasions.

Recommendation

17. The Standing Committee recommends against the adoption of the canon and has already recommended that the Synod consider adopting its own rules through the Church Ministry (Robes) Ordinance 1996.

For and on behalf of the Standing Committee

MARK PAYNE
Legal Officer

4 February 1997

Canon Concerning Vesture of Ministers 1992

A Canon concerning Vesture of Ministers 1992.

The General Synod prescribes as follows -

1. This canon may be cited as "Canon concerning Vesture of Ministers 1992".
2. This Church recognises that, by tradition, its ministers have worn distinctive vesture whilst ministering in Divine Service. This Church also recognises that the vesture worn by its ministers may vary from time to time and place to place. This Church declares that it does not attach any particular doctrinal significance to the diversity of vesture worn by its ministers.
3. Subject to sections 4 and 5, whilst ministering in Divine Service in a cathedral or church a minister shall comply with such standards of vesture as may be prescribed by ordinance of the synod of the diocese in which the service is being held or, in the absence of any such ordinance, by the bishop.
4. A minister may wear a surplice in lieu of the vesture prescribed by the synod or the bishop pursuant to section 3 or referred to in section 5.
5. Subject to section 4 and to any requirement made pursuant to section 3, a minister may wear the vesture which has customarily been worn in the place in which the service is being held.
6. The Use of the Surplice Canon 1977 is repealed as regards a diocese which adopts this canon.
7. The canons numbered 17, 24, 25, 58 and 74 of the Canons of 1603, in so far as the same may have any force have no operation in a diocese which adopts this canon.
8. The provisions of this canon affect the order and good government of this Church within a diocese and shall not come into force in a diocese unless and until the diocese adopts this canon by ordinance of the synod of the diocese.

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Constitution Amendment (Interpretation) Canon 1995

(A report from the Standing Committee.)

Background

1. The Constitution Amendment (Interpretation) Canon 1995 (the "Canon"), copy attached, seeks to amend the Constitution of the Anglican of Australia (the "Constitution") (set out on pages 122 to 151 inclusive of the *7th Handbook*) in 2 major respects.

2. First, the Canon seeks to insert a definition of the word "month" into the Constitution and includes a provision which deals with the reckoning of time. The Standing Committee does not believe that these amendments are objectionable.

3. Secondly, the Canon seeks to omit the existing definition of "discipline" from section 74 of the Constitution and insert a new definition. The existing definition of "discipline" is -

"Discipline' includes the rules of this Church and the rules of good conduct."

and the proposed definition is -

"(8) Except in Part 1, 'Discipline' means the ecclesiastical laws regulating the religious and moral life of his Church as opposed to regulations concerning temporal rather than spiritual matters and in Part IX also includes the rules of this Church."

4. The meaning of the word "discipline" in the various places it appears in the Constitution is difficult to ascertain. Various views have been expressed and a number of attempts have been made to interpret the word in a logical and consistent way. None are entirely satisfactory but the better view is probably that the word has 3 distinct meanings -

- (a) In Part I where, in section 3, there is reference to "his (that is Christ's) discipline".
- (b) In Part IX where the word has its "ordinary" meaning with the additional meaning attributed by section 74.
- (c) In Parts II to X where the word has its "ordinary" meaning without the additional meaning attributed by section 74.

5. The word "discipline" mostly appears in the Constitution in the context of the phrase "ritual ceremonial and discipline" and it is from this context that the "ordinary" meaning of the word arises. Of the "ordinary" meaning, in his 1992 Presidential Address to the Synod, Archbishop Robinson (as he then was) said -

"The most sensible understanding of discipline in the phrase "ritual ceremonial and discipline" is that suggested by Mr Cameron, namely that it refers to the obligation to observe and carry out the ritual and ceremonial of the Church. This sense of discipline is well seen in the Canons of 1603 relating to Divine Service and the Functions of Ministers; but such discipline is limited to this area."

6. The word "discipline" is of particular importance in 2 contexts -

- (a) In section 30 which provides that if a canon affects "discipline of this Church" it has no force in a diocese unless the synod of the diocese adopts it by ordinance.
- (b) In section 51(2) which gives the diocesan tribunal jurisdiction to hear and determine charges of breaches of "discipline". (Section 51(2) is part of Chapter IX in which "discipline" probably has the extended meaning given by section 74.)

7. In the Canon the General Synod has proposed a different definition which the Standing Committee considers is as obscure as the present definition. Some of the problems may be illustrated by the following questions which the proposed definition raises -

- (a) What are "ecclesiastical laws"? If the "ecclesiastical laws" are "laws of the church", it follows that every law any synod makes is an "ecclesiastical law".
- (b) What is the difference between "laws", "regulations" and "rules"? A difference is clearly implied in the definition.
- (c) What is the "moral life" of "this Church", that is, the statutory institution created in 1961 by a series of Acts of Parliament?
- (d) What are "temporal matters" as distinct from "spiritual matters"?

8. Bearing in mind that members of the clergy can be charged under the Tribunal Ordinance 1962 with a breach of "discipline" the Standing Committee thinks the meaning of that word should be clear and precise.

Recommendation

9. The Standing Committee recommends that the Synod withhold assent to the Canon on the grounds that the definition of “discipline” proposed to be inserted into the Constitution is neither clear nor precise.

For and on behalf of the Standing Committee

MARK PAYNE

Legal Officer

4 February 1997

Constitution Amendment (Interpretation) Canon 1995

The General Synod prescribes as follows -

1. This Canon may be cited as the "Constitution Amendment (Interpretation) Canon 1995".
2. The definition of "Discipline" in clause 74(1) of the Constitution is deleted.
3. The following definitions are inserted in clause 74(1) -
"Month" means calendar month, that is, a period commencing at the beginning of a day of one of the twelve months of the year and ending immediately before the beginning of a corresponding day on the next month or, if there is no such corresponding day, ending at the expiration of the next month.
4. The following new sub-clause (8) is added to clause 74 -
"(8) Except in Chapter I, 'discipline' means the ecclesiastical laws and customs regulating the religious and moral life of this Church as opposed to its temporal affairs and, in Chapter IX, also includes the rules of this Church and the rules of good conduct."
5. The following new sub-clause 9 is added to clause 74 -
"(9) Where any period of time, dating from a given day, act or event is prescribed or allowed for any purpose, the time shall, unless the contrary intention appears, be reckoned exclusive of such day or of the day of such act or event. Where the last day of any period prescribed or allowed for the doing of anything falls on a Saturday, on a Sunday or on a day which is a public or bank holiday in the place in which the thing is to be done or may be done, the thing may be done on the first day following which is not a Saturday, a Sunday or a public or bank holiday in that place."

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Constitution of A Diocese Alteration Canon 1995

(A report from the Standing Committee.)

Background

1. The Constitution of A Diocese Alteration Canon 1995 (the "Canon"), copy attached, provides a mechanism for the synod of a diocese, by ordinance, to alter the constitution of that diocese if the ordinance -
 - (a) is passed by b of the members of each house of the Synod (that is, Laity and Clergy) present and voting at the same sitting of the Synod;
 - (b) is confirmed by resolution passed in like manner within 3 years at a subsequent sitting of the same Synod or at a sitting of a later Synod; and
 - (c) is assented to in writing by the bishop.
2. The method of alteration of the constitution of a diocese in the Canon is in addition to existing methods by which the constitution may be altered.
3. The Canon affects the order and good government of a church in a diocese and so does not come into effect in Sydney until the Synod, by ordinance, adopts the Canon.

Constitution of Dioceses in NSW

4. The Constitution of each diocese in the Province of New South Wales is the 1902 Constitutions in the Schedule to the Anglican Church of Australia Constitutions Act 1902 (page 154 of the *7th Handbook*). The 29th of those Constitutions provides a mechanism for the alteration of these Constitutions namely, by Provincial Synod ordinance, adopted by ordinance by all synods in the Province and then ratified by General Synod.
5. In 1994 the Provincial Synod passed a new Constitutions Ordinance to amend the 1902 Constitutions and the commencement of the new Constitutions is only dependant upon General Synod ratification, the synod of each diocese in the Province having adopted the Provincial Synod ordinance.
6. In the Standing Committee's view, it is uncertain how the power given by the Canon affects the 1902 Constitutions. In any event, given the change to the 1902 Constitutions to be approved by the General Synod in 1998, there does not seem to be much need for Sydney to adopt the Canon at this time.
7. The situation is different for dioceses in other states and the Standing Committee understands that the Canon was passed primarily for the benefit of those dioceses.

Recommendation

8. The Standing Committee recommends that the Synod defer consideration of this canon until after the 1998 General Synod session.

For and on behalf of the Standing Committee

MARK PAYNE
Legal Officer

4 February 1997

Constitution of A Diocese Alteration Canon 1995

A Canon to prescribe a method of alteration of the constitution of a diocese.

By virtue of the powers contained in section 50 of the Constitution, the General Synod prescribes as follows:

Title

1. This canon may be cited as the "Constitution of a Diocese Alteration Canon 1995".

Alteration of Constitution of a diocese

2. Subject to the Constitution, the constitution of a diocese may be altered by an ordinance of the synod of that diocese provided that such ordinance -

- (a) is passed by -
 - (i) a majority of two-thirds of the members of the House of Laity of the Synod present and voting; and
 - (ii) a majority of two-thirds of the members of the House of Clergy of the Synod present and voting -
at the same sitting of the Synod; and
- (b) is confirmed by resolution passed in like manner within 3 years at a subsequent sitting of the same Synod or at a sitting of a later Synod; and
- (c) is assented to in writing by the bishop.

Date of alteration

3. An alteration to the constitution of a diocese made in accordance with this canon shall take effect on and from the date on which it is assented to by the bishop or, if the ordinance provides for it to take effect on a later date, on that later date.

Other means of alteration not affected

4. This canon shall not prevent the constitution of a diocese from being altered in accordance therewith.

Canon affects the order and good government of a diocese

5. The provisions of this canon affect the order and good government of the Church within a diocese and shall not come into force in any diocese unless and until the diocese by ordinance adopts the canon.

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Interpretation Canon 1995

(A report from the Standing Committee.)

Introduction

1. It is common for a law making body to pass legislation which defines or interprets certain terms commonly used in its legislation. This avoids the need for such terms to be defined in each piece of legislation in which those terms are used. For example, the Synod has made the Interpretation Ordinance 1985 which defines certain terms used commonly in Synod ordinances.

Interpretation Canon 1995

2. The Interpretation Canon 1995 of the General Synod (the "Canon"), copy attached, seeks to set out certain definitions and principles of interpretation to be used in General Synod canons, rules and Standing Orders. In particular the Canon seeks -

- (a) to apply definitions in sections 74(1) and (2) of the Constitution of the Anglican Church of Australia (the "Constitution") to all canons, rules and Standing Orders made after 1995;
- (b) to repeal Rule XIX (Rule re interpretation) of the General Synod in so far as it applies to canons, rules and Standing Orders made after 1995 (Rule XIX provides "Section 74 of the Constitution shall apply to the canons, the rules and Standing Orders of Synod unless the context or subject matter thereof indicates to the contrary"); and
- (c) to provide general rules for the interpretation of canons, rules and Standing Orders of General Synod.

3. The Canon does not affect the order and good government of the church in a diocese and so does not have to be adopted in Sydney.

4. While the Canon applies prospectively, clause 8(a) of the Canon may give rise to problems in future. Clause 8(a) provides -

"In a canon, unless the contrary intention appears -

- (a) words importing a gender include every other gender;"

5. No qualification has been included in clause 8(a) to the effect that, in the case of persons in the orders of bishops and priests, the male gender is the only gender to apply in those dioceses which do not allow for the ordination of women as priests. Without such a qualification, the Standing Committee considers that any diocese adopting a canon dealing with priests will be assenting to a notion of women priests and whatever that may mean in the particular context.

6. If a diocese chooses not to adopt a General Synod canon by reason of the interpretation problems created by clause 8(a) the Standing Committee considers that the diocese may find that it is unable to take the benefit of what otherwise may be desirable legislation.

Recommendation

7. The Standing Committee recommends that the Synod requests that clause 8(a) of the Canon be amended so that, in the case of persons in the orders of bishops and priests, the male gender is the only gender to apply in those Dioceses which do not allow for the ordination of women as priests.

For and on behalf of the Standing Committee

MARK PAYNE
Legal Officer

5 February 1997

Interpretation Canon 1995

A Canon concerning the Interpretation of Canons.

The General Synod prescribes as follows -

Short title

1. This canon may be cited as the "Interpretation Canon 1995".

Definition of canon

2. In this canon, except section 3, "canon" means canon, rule or resolution made by General Synod under Chapter V of the Constitution and includes the Standing Orders of General Synod.

Application to canons

3. Except so far as the contrary intention appears, this canon applies to -
 - (a) this canon; and
 - (b) all canons made by General Synod on or after 1 January 1996; and
 - (c) all rules and resolutions made by General Synod under Chapter V of the Constitution made on or after that date; and
 - (d) the Standing Orders of General Synod made on or after that date.

Definitions in section 74(1) and (2) of the Constitution

4. Except so far as the contrary intention appears, a word or expression that is defined in section 74(1) and (2) of the Constitution, has, when used in a canon, the same meaning in the canon as it has in the Constitution.

Effect of repeal of canon

5. (1) The repeal of a canon, or part of a canon, by which a previous canon or part of a canon was repealed does not have the effect of reviving the previous canon or part.
 - (2) If a canon repeals in whole or in part a former canon, the repeal does not -
 - (a) revive anything not in force or existing at the time at which the repeal takes effect; or
 - (b) affect the previous operation of a canon so repealed, or anything done or suffered under a canon so repealed; or
 - (c) affect a right, privilege, obligation or liability acquired or incurred under a canon so repealed; or
 - (d) affect any investigation, proceeding or remedy in respect of such a right, privilege, obligation or liability -

and any such investigation, proceeding or remedy may be instituted, continued or enforced as if the repealing canon had not been made.

References to amended or re-enacted canons

6. If a canon contains a reference to a short title that is or was provided by another canon for the citation of that other canon as originally made, or as amended, then, except so far as the contrary intention appears -
 - (a) the reference shall be construed as a reference to that other canon as originally made and as amended from time to time; and
 - (b) if that other canon has been repealed and re-made, with or without modifications, the reference shall be construed as including a reference to the re-made canon as originally made and as amended from time to time and, where, in connection with that reference, particular provisions of the repealed canon are referred to, being provisions to which provisions of the re-made canon correspond, the reference to those particular provisions shall be construed as including a reference to those corresponding provisions.

Parts of speech and grammatical forms

7. In a canon, unless the contrary intention appears, where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

Gender and number

8. In a canon, unless the contrary intention appears -
 - (a) words importing a gender include every other gender; and
 - (b) words in the singular number include the plural and words in the plural number include the singular.

References to month or time

9. (1) In a canon, unless the contrary intention appears -

"month" means a period commencing at the beginning of a day of one of the 12 months of the year and ending immediately before the beginning of the corresponding day of the next month or, if there is no such corresponding day, ending at the expiration of the next month.

(2) Where, in a canon, any period of time, dating from a given day, act or event, is prescribed or allowed for any purpose, the time shall, unless the contrary intention appears, be reckoned exclusive of such day or of the day of such act or event.

(3) Where the last day of any period prescribed or allowed by a canon for the doing of anything falls on a Saturday, on a Sunday or on a day which is a public holiday or a bank holiday in the place in which the thing is to be or may be done, the thing may be done on the first day following which is not a Saturday, a Sunday or a public holiday or bank holiday in that place.

References to writing, documents and records

10. In a canon, unless the contrary intention appears -

"document" includes -

- (a) any paper or other material on which there is writing; and
- (b) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and
- (c) any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or service;

"record" includes information stored or recorded by means of a computer;

"writing" includes any mode of representing or reproducing words, figures, drawings, or symbols in a visible form.

Construction of rules made under canons

11. If a canon confers power to make a rule or regulation, expressions used in a rule or regulation made in the exercise of that power, shall, unless the contrary intention appears, have the same respective meanings as they have in the canon conferring the power as amended and in force for the time being (or if not used in the canon, would have if so used).

Repeal of Rule XIX

12. (1) Rule XIX (Rule re Interpretation) is repealed.

(2) The repeal of Rule XIX does not affect its application to canons made before 1 January 1996.

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