

General Synod 2010 Legislation

(A report from the Standing Committee.)

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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 www.sds.asn.au), 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.

3. Where a proposed canon affects the ritual, ceremonial or discipline of the Church the usual procedure is that the canon is only passed provisionally. It then becomes known as a provisional canon. Under the Constitution, a provisional canon is referred to each diocese for *assent* or *dissent*. If all dioceses *assent* to the provisional canon then it becomes a canon. If a diocese *dissents*, the provisional canon must be reconsidered at a future session of General Synod. If at that future session the provisional canon is passed by a 2/3 majority of the members of each house of General Synod, it becomes a canon. If passed, but not by a 2/3 majority, it is again referred to diocesan synods for assent or dissent. In any event if the provisional canon becomes a canon, the canon does not have effect in a diocese until the diocese by ordinance *adopts* that canon.

Canons passed by the General Synod in 2010

4. In 2010 the General Synod passed the following canons –
- Appellate Tribunal Amendment (Part Heard Matters) Canon 2010*
 - Constitution Amendment (Appellate Tribunal Part Heard Matters) Canon 2010*
 - Constitution Amendment (Chapter V) Canon 2010*
 - Constitution Amendment (Diocesan Council) Canon 2010*
 - Constitution Amendment (Diocesan Council) Repeal Canon 2010*
 - Constitution Amendment (Section 30) Canon 2010*
 - Constitution Amendment (Sentences of Tribunals) Canon 2010*
 - Constitution of the Province of Western Australia 1914-1984 Amendment Canon 2009 (No 1 of 2009) Ratification Canon 2010*
 - Long Service Leave Canon 2010*
 - National Aboriginal and Torres Strait Islander Anglican Council Canon 2010*
 - Special Tribunal Canon 2007 Amendment (No 1) Canon 2010*
 - Special Tribunal Canon 2007 Amendment (No 2) Canon 2010*
 - The National Register Canon 2007 Amendment Canon 2010*
 - Trust Corporation Canon 2010*

Canons in force

5. Several of these canons have taken effect because they do not affect the order and good government or the church trust property of the Church in a diocese. These canons are –
- Trust Corporation Canon 2010*
 - Constitution of the Province of Western Australia 1914-1984 Amendment Canon 2009 (No 1 of 2009) Ratification Canon 2010*
 - Special Tribunal Canon Amendment (No 1) Canon 2010.*

6. The Standing Committee considers that aspects of the Trust Corporation Act 2010 are beyond the legislative power of the General Synod. These views have been conveyed to the General Secretary of the General Synod and it is understood the matter has been referred to the Church Law Commission.

Canons not currently in force

7. The *Appellate Tribunal Amendment (Part Heard Matters) Canon 2010* has not come into effect and will not do so until the

Constitution Amendment (Appellate Tribunal Part Heard Matters) Canon 2010 comes into effect.

8. The *National Aboriginal and Torres Strait Islander Anglican Council Canon 2010* has not come into effect and will not do so until the Council consents to the canon.

9. The Synod assented to the *Long Service Leave Canon 2010* at its 2010 session. This Canon has not come into effect and will not do so until 1 January after the Canon has been assented to by each diocese participating in the long service scheme under the Canon.

Canons for adoption by our Synod

10. The Standing Committee considers that the *Special Tribunal Canon 2007 Amendment (No 2) Canon 2010* and *The National Register Canon 2007 Amendment Canon 2010* affect order and good government or the church trust property within the Diocese notwithstanding that they do not contain declarations to this effect.

11. Accordingly, if these canons are to have force in this Diocese, it is appropriate for the Synod to make the relevant declaration and adopt the canon by ordinance.

Special Tribunal Canon 2007 Amendment (No 2) Canon 2010

12. The Special Tribunal Canon 2007, among other things, establishes the Episcopal Standards Commission (the "ESC"), purports to confer certain powers on the ESC, and authorizes the ESC to prosecute diocesan bishops in the Special Tribunal. The canon also allows the Synod of a diocese to exclude the power of the ESC to prosecute the bishop of the diocese. However, this leaves open the possibility for the ESC to exercise the powers in the Canon when it cannot use the information resulting from the exercise of those powers to prosecute a diocesan bishop.

13. The purpose of this canon is to clarify the position by making it clear that the ESC can use the powers which may (or may not) be conferred on it by the Special Tribunal Canon 2007 where the Synod of Diocese has not excluded the ESC's power to prosecute its bishop.

14. The amendment also assists those who have a legitimate complaint against the bishop of a diocese which has excluded the prosecuting power of the ESC by referring them to someone who ought to be prosecuting their complaint if that course of action is appropriate.

15. The Canon preserves the right of diocesan synods to determine what course is appropriate to their circumstances.

16. For these reasons, the Standing Committee recommends that –
(a) the Synod declare its opinion that the Special Tribunal Canon 2007 Amendment (No 2) Canon 2010 affects the

order and good government of the Church within the Diocese of Sydney, and

(b) the Synod adopt the Canon.

See separate explanatory statement and bill.

The National Register Canon 2007 Amendment Canon 2010

17. The Standing Committee is still considering the National Register Canon 2007 Amendment Canon 2010 and intends to make recommendations about this Canon in due course.

Canons for assent by our Synod

18. Each of the following canons amends the Constitution and do not come into effect until at least $\frac{3}{4}$ of the diocesan synods, including all of the metropolitan sees, have assented to the canon by ordinance with all such assents to be in force at the same time –

Constitution Amendment (Diocesan Council) Canon 2010

Constitution Amendment (Diocesan Council) Repeal Canon 2010

Constitution Amendment (Appellate Tribunal Part Heard Matters) Canon 2010

Constitution Amendment (Section 30) Canon 2010

Constitution Amendment (Sentences of Tribunals) Canon 2010

Constitution Amendment (Chapter V) Canon 2010

19. Following the outcome of the 2005 reference to the Appellate Tribunal concerning women bishops, the Standing Committee considers that no reliance can now be placed on representations by church bodies or officers as to the effect of amendments to the Constitution proposed by them. Accordingly since that time the Standing Committee has been taking a more cautious approach than previously in making recommendations concerning amendments to the Constitution.

Constitution Amendment (Section 30) Canon 2010

20. Section 30 of the Constitution covers the situation where a canon of the General Synod does not declare that it affects the order and good government or the property of a diocese but a diocese considers that the canon does affect these matters. The proposed amendment would require a diocese which makes a declaration of opinion under section 30 to provide reasons for its opinion by providing that if reasons are not given the opinion is ineffective.

21. For many years the General Synod Standing Committee (GSSC) adopted the practice of accepting the opinions of diocesan synods as to whether a canon affects order and government of the diocese. In recent times the GSSC has departed from that practice and, in exercising its powers under section 30(c) of the Constitution,

has taken to rejecting the opinions of Diocesan Synods. At the same time the Appellate Tribunal has adopted a very restrictive view of the matters affecting order and good government.

22. The Standing Committee supported an alternative amendment to section 30 which it referred to the General Synod session in 2010 but which was not considered by the General Synod. The alternative amendment provides that if the General Synod does not make a declaration that a canon affects the order and good government or the property of a diocese but a diocese does make such a declaration, the canon will not come into effect in the diocese until adopted by ordinance of the diocesan synod. The alternative amendment enables the opinion of a diocesan synod to be conclusive on the basis that a diocesan synod is much better placed to determine the matters affecting the order and good government or property of its diocese than either the GSSC or the Appellate Tribunal.

23. The Standing Committee recommends that the Synod not assent to this Canon. The Standing Committee recommends that the Synod endorse the alternative amendment to section 30 of the Constitution which was supported by the Standing Committee for promotion to the General Synod in 2010.

24. A copy of the Canon and the Standing Committee's alternative bill for a canon are attached as Annexure 1 and Annexure 2 respectively.

Constitution Amendment (Chapter V) Canon 2010

25. From time to time there is a need to amend a canon to satisfy a change in government regulatory requirements (for example, in company law, taxation law and superannuation). Only General Synod can make or amend canons.

26. The Canon inserts a new section 28 in the Constitution to allow canons to be made other than at a General Synod session if at least $\frac{3}{4}$ of all diocesan synods including all Metropolitan Sees assent to it by ordinance and all assents are in force at the same time. In the case of bills for canons that will impose a financial liability on a diocese, all diocesan synods must assent with all assents being in force at the same time.

27. The mechanism cannot be used for canons which deal with or concern ritual, ceremonial or discipline of the Church.

28. The Standing Committee supports the canon as a helpful means of dealing with matters that are not controversial in between sessions of the General Synod.

29. The Standing Committee recommends that the Synod assent to this Canon. See separate explanatory statement and bill.

Canons still under consideration

30. The Standing Committee is still in the process of considering the following canons –

Constitution Amendment (Diocesan Council) Canon 2010

Constitution Amendment (Diocesan Council) Repeal Canon 2010

Constitution Amendment (Appellate Tribunal Part Heard Matters) Canon 2010

Constitution Amendment (Sentences of Tribunals) Canon 2010

31. Recommendations about these canons will be made in due course.

Summary of recommendations

32. The Standing Committee recommends that the Synod declare its opinion that the *Special Tribunal Canon 2007 Amendment (No 2) Canon 2010* affects the order and good government of the Church in the Diocese and that the Canon be adopted.

33. The Standing Committee recommends that assent be given to the *Constitution Amendment (Chapter V) Canon 2010*.

34. The Standing Committee recommends that assent not be given to the *Constitution Amendment (Section 30) Canon 2010*.

35. The Standing Committee recommends that the Synod endorse the alternative amendment to Section 30 of the Constitution attached as Annexure 2 which was supported by the Standing Committee for promotion to the General Synod in 2010.

For and on behalf of the Standing Committee.

ROBERT WICKS
Diocesan Secretary

11 August 2011

Annexure 1

Constitution Amendment (Section 30) Canon 2010

A canon to amend Section 30 of the Constitution.

The General Synod prescribes as follows:-

1. This Canon is the Constitution Amendment (Section 30) Canon, 2010
2. Section 30 of the Constitution is amended by adding immediately after the word 'thereafter' in proviso (c) the words 'of its opinion and its reasons therefor'.
3. Section 30 of the Constitution is further amended by adding immediately after the word 'opinion' where first occurring in proviso (c)(ii) the words 'as aforesaid'

Certification of copy of Canon as passed [SO63(20)]

We certify that the Canon above is a copy of the Canon as passed on 19 September 2010.

L.R. Snell
Clerical Secretary

Date: 19/9/2010

A. Skamp
Lay Secretary

Date: 19/9/2010

Annexure 2

Standing Committee's alternative bill for a canon –

Constitution Amendment (Section 30) Canon 2010

The General Synod prescribes as follows:

Title

1. This Canon may be cited as "Constitution Amendment (Section 30) Canon 2010".

Amendment to section 30

2. Section 30 is amended as follows:
 - (a) by the substitution of the following for all of the words in paragraph (a):

"Where the General Synod does not make a declaration under paragraph (b) of this section in relation to a canon, and the synod of a diocese (or the diocesan council thereof) declares that the canon affects:

 - (i) the ritual, ceremonial or discipline of this Church within such diocese; or
 - (ii) the order and good government of the Church within such diocese, or
 - (iii) the church trust property of such diocese,

such canon shall not come into force in such diocese unless and until the diocese, by ordinance of its synod adopts the said canon."; and
 - (b) by the omission of paragraph (c).

We certify that this bill was passed by the General Synod of The Anglican Church of Australia this day of 2010.