

## General Synod 2014 Legislation

(A report from the Standing Committee.)

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### **Purpose**

1. The purpose of this report is to outline the Standing Committee's recommendations with respect to legislation passed by the General Synod in 2014.

### **Recommendations**

2. The Standing Committee recommends to the Synod that it –
- not adopt the *Holy Orders, Relinquishment and Deposition Canon 2004 Amendment Canon 2014* or the *Canon concerning confessions 1989 Amendment Canon 2014*,
  - adopt the *Use of Church Names Canon 1989 Amendment Canon 2014*, and
  - assent to the *Constitution Amendment (Membership of the Diocesan Tribunal) Canon 2014* and the *Constitution Amendment (Membership of the Provincial Tribunal) Canon 2014*.

### **Background**

3. 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](http://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.

4. 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 diocesan synods report their *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.

5. 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 two-thirds majority of the members of each house of General Synod, it becomes a canon. If passed, but not by a two-thirds 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 2014**

6. In 2014 the General Synod passed the following canons –
- National Aboriginal and Torres Strait Islander Anglican Council Canon 2014*
  - Financial Protection Canon 1995 Amendment Canon 2014*
  - Special Tribunal Canon 2007 Amendment Canon 2014*
  - Primate Canon 1985 Amendment Canon 2014*
  - Use of Church Names Canon 1989 Amendment Canon 2014*
  - Holy Orders Relinquishment and Deposition Canon 2004 Amendment Canon 2014*
  - Special Tribunal Canon 2007 (section 52) Amendment Canon 2014*
  - National Register Canon 2007 (Amendment) Canon 2014*
  - Protocol for access to and disclosure of Information in the National Register 2007 (Amendment) Protocol 2014*

*Canon concerning confessions 1989 Amendment Canon 2014*

*Constitution Amendment (Membership of the Diocesan Tribunal) Canon 2014*

*Constitution Amendment (Membership of the Provincial Tribunal) Canon 2014*

### **Canons in force**

7. 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 –

*National Aboriginal and Torres Strait Islander Anglican Council Canon 2014*

*Financial Protection Canon 1995 Amendment Canon 2014*

*Special Tribunal Canon 2007 Amendment Canon 2014*

*Primate Canon 1985 Amendment Canon 2014*

*Use of Church Names Canon 1989 Amendment Canon 2014*

*Holy Orders Relinquishment and Deposition Canon 2004 Amendment Canon 2014*

*Special Tribunal Canon 2007 (section 52) Amendment Canon 2014*

*National Register Canon 2007 (Amendment) Canon 2014*

*Protocol for access to and disclosure of Information in the National Register 2007 (Amendment) Protocol 2014*

### **Canons for adoption by our Synod**

8. The *Holy Orders, Relinquishment and Deposition Canon 2004 Amendment Canon 2014* and the *Canon concerning confessions 1989 Amendment Canon 2014* contain declarations that they affect order and good government of the Church within a diocese. Accordingly, if these canons are to have force in the Diocese of Sydney, they must be adopted by ordinance.

9. The *Use of Church Names Canon 1989 Amendment Canon 2014* was introduced at General Synod at the request of the Diocese of Sydney and drafted by representatives from our Diocese. It does not contain a declaration that it affects order and good government. It was considered that the General Synod would have power to pass the amending Canon under section 6 of the *Anglican Church of Australia Act 1976* which provides that the description "Anglican" among others must not be used in connection with any business, trade or profession unless authorised "by or pursuant to a Canon of the General Synod". However a better view may be that the requirements of the *Anglican Church of Australia Act 1961* with respect to the making of canons apply to any canon made for the purposes of the 1976 Act.

10. The *Use of Church Names Canon 1989 Amendment Canon 2014* makes amendments to the way names and descriptions relating to the Anglican Church of Australia can be used in a diocese in NSW and would, on this basis, affect the order and good government of the Church within a diocese. It is noted that the principal canon was adopted by our Diocese in 1990, although the adopting ordinance did not make any reference to order and good government. It is proposed, for abundant caution, that the amending Canon also be adopted.

*Holy Orders, Relinquishment and Deposition Canon 2004 Amendment Canon 2014*

11. The *Holy Orders, Relinquishment and Deposition Canon 2004 Amendment Canon 2014* makes clear that only details of relinquishments and depositions from holy orders which arise out of sexual misconduct or child abuse are to be included on the National Register. The *National Register Canon 2007* contemplates this but the *Holy Orders, Relinquishment and Deposition Canon 2004* stipulates that all instruments are to be included on the National Register.

12. The relinquishment of holy orders in the Diocese of Sydney is regulated by the *Relinquishment of Holy Orders Ordinance 1994*, being an ordinance of our Synod. This Ordinance does not contain any provisions which conflict with the *National Register Canon 2007*. The *Holy Orders, Relinquishment and Deposition Canon 2004* is not in force in the Diocese of Sydney. The Standing Committee therefore recommends that the Synod not adopt the amending Canon.

*Canon concerning confessions 1989 Amendment Canon 2014*

13. The *Canon concerning confessions 1989 Amendment Canon 2014* provides, with respect to *Canon concerning Confessions 1989*, that where a person confesses that he or she has committed a serious offence (including a criminal offence involving a sexual element that is committed against, with or in the presence of a child, child exploitation material or domestic violence) an ordained minister is only obliged to keep this confidential where the ordained minister is reasonably satisfied that the person has reported the serious offence to the police.

14. The *Canon concerning Confessions 1989* is not in force in the Diocese of Sydney. The Standing Committee therefore recommends that the Synod not adopt the amending Canon.

15. It should be noted that in NSW, section 316 of the *Crimes Act 1900* requires a person to disclose to the police, knowledge or belief that a person has committed a “serious indictable offence” where this information might be of material assistance in securing the apprehension of the offender or the prosecution or conviction of the offender. There is an exception where a person has a “reasonable excuse” for not disclosing. However it is not generally accepted that the mere fact knowledge arises in the context of a confession or pastoral conversation will, on its own, constitute a “reasonable excuse”.

*Use of Church Names Canon 1989 Amendment Canon 2014*

16. The *Use of Church Names Canon 1989* regulates the use of name and descriptions relating to the Anglican Church of Australia within NSW. The Canon sets out a process for the relevant bishop-in-council to issue a certificate to authorise use of the name or description, and for the relevant bishop to withdraw that authorisation. The Canon also contains a schedule which lists a number of third party bodies that are deemed to be authorised to use the name or description unless that authorisation is withdrawn. The amending Canon replaces this schedule with a register that can be administratively updated and published by the General Secretary of the General Synod whenever a body is authorised to use the Church name by the relevant bishop-in-council, a body so authorised has changed its name or an authority has been withdrawn by the relevant bishop.

17. The amending Canon was proposed to address a recent circumstance whereby the Archbishop had withdrawn an authorisation but the body continued to be listed in the schedule pending the General Synod amending the Canon. The amendment will allow the schedule to be more readily updated. The Standing Committee recommends that the Synod adopt the amending Canon.

18. A copy of the amending Canon appears in the Schedule to the bill for the *General Synod – Use of Church Names Canon 1989 Amendment Canon 2014 Adopting Ordinance 2014*. This bill is printed separately.

**Canons for assent by our Synod**

19. Each of the following canons amends the Constitution and do not come into effect until at least three-quarters 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 (Membership of the Diocesan Tribunal) Canon 2014*

*Constitution Amendment (Membership of the Provincial Tribunal) Canon 2014*

*Constitution Amendment (Membership of the Diocesan Tribunal) Canon 2014*

20. The possibility exists under the Constitution that if a diocesan bishop is a member of the Diocesan Tribunal, the bishop may hear a charge against a person and also have the responsibility for exercising a prerogative of mercy in respect of the sentence. This could give rise to an allegation of apprehended or actual bias.

21. The *Constitution Amendment (Membership of the Diocesan Tribunal) Canon 2014* amends section 54 of the Constitution to provide that –

- (a) a diocesan bishop is not eligible to be a member of the Diocesan Tribunal, and if already a member, will, upon becoming the bishop, cease to be a member, and
- (b) the president of the Diocesan Tribunal is to be a person qualified to be a lay member of the Appellate Tribunal.

22. The Standing Committee recommends that the Synod assent to this Canon. A copy of the amending Canon appears in the Schedule to the bill for the *General Synod – Constitution Amendment (Membership of the Diocesan Tribunal) Canon 2014 Assenting Ordinance 2014*. This bill is printed separately.

*Constitution Amendment (Membership of the Provincial Tribunal) Canon 2014*

23. The *Constitution Amendment (Membership of the Provincial Tribunal) Canon 2014* addresses the equivalent problem to that addressed by the *Constitution Amendment (Membership of the Diocesan Tribunal) Canon 2014* but in relation to the Provincial Tribunal.

24. The Canon provides that –

- (a) the Metropolitan or any other bishop of a diocese of the province is not eligible to be a member of the Provincial Tribunal, and if already a member, will, upon becoming the Metropolitan or other bishop, cease to be a member, and
- (b) the President of the Provincial Tribunal is to be a person qualified to be a lay member of the Appellate Tribunal.

25. The Standing Committee recommends that the Synod assent to this Canon. A copy of the amending Canon appears in the Schedule to the bill for the *General Synod – Constitution Amendment (Membership of the Provincial Tribunal) Canon 2014 Assenting Ordinance 2014*. This bill is printed separately.

26. Presently there is no provincial tribunal of the Province of NSW and the Canon is therefore without effect here.

For and on behalf of the Standing Committee

ROBERT WICKS  
*Diocesan Secretary*

26 August 2014