

General Synod – Canon Concerning Authority on Certain Matters 1989 Adopting Ordinance 1993

Explanatory Statement

Introduction

1. In 1991 the Sydney Synod assented to the Provisional Canon Concerning Authority on Certain Matters 1989. However, not all dioceses assented to the Provisional Canon and, in accordance with the Constitution of the Anglican Church of Australia, the Provisional Canon was referred back to General Synod in 1992.

Canon No 9 of 1992

2. The Canon Concerning Authority on Certain Matters 1989 (the "Canon") was passed by the General Synod in 1992. The text of the Canon is printed as a schedule to the assenting bill. The Canon is substantially in the same form as the Provisional Canon except for the deletion of one clause which is referred to in item 10 of this explanatory statement.

3. The Canon deals with 2 matters which are significant, though neither of which occurs that often.

4. Section 2 of the Canon deals with the power or discretion of the bishop of a diocese to delegate to an assistant bishop. Local legislation may give power to a bishop to delegate his functions where he thinks fit. There is doubt as to whether this can occur if the measure giving power to a bishop is a General Synod Canon as opposed to a diocesan law. Section 2 will enable delegation to be made in such matters.

5. Section 3 of the Canon is necessary because of the separation of the Australian Church from the Church of England. Historically, the Archbishop of Canterbury had special powers derived from the Pope in the Middle Ages, which allowed him to regularise situations which were otherwise completely invalid. The lack of this power has proved embarrassing in a few cases where a bishop in error has ordained a person as deacon or priest under the minimum age set out in the Prayer Book. It has been thought in Australia that such ordinations are invalid and that the person must be re-ordained. In England, the Archbishop of Canterbury can declare that, notwithstanding the error, the person is validly ordained. Under section 3, our Archbishop will be given the same power for the Province of New South Wales as the Archbishop of Canterbury held on 31 December 1961, the date on which the Anglican Church of Australia came into existence.

6. Previous debates on the provisional canon raised the question whether the effect of section 3 is to confer extra powers of an unspecified nature on a metropolitan. That impression can be easily obtained from section 3. The law of dispensations is a complex one, but it is not necessary to go fully into it when considering this measure.

7. The 1935 Report of Inquiry by the Archbishop of Canterbury disclosed that there were 14 types of dispensation traditionally granted by the Archbishop of Canterbury. However, most of these can no longer apply in modern conditions. For instance, dispensation for people to eat meat on Fridays, for the creation of notaries, for legitimation and for marrying without banns have no modern application.

8. There are really only two types of dispensation of relevance, namely -

- (a) permitting persons to take Holy Orders under the usual age; and
- (b) permitting a rector to hold more than one parish at the same time.

9. In practice, within the Diocese of Sydney, rectors have been permitted to be acting rectors of neighbouring parishes, particularly where a neighbouring parish has some financial problems and may, in the future, be amalgamated. Technically we should not be doing this and the rector commits an ecclesiastical offence. By passing section 3 the Archbishop will be able to regularise the position.

10. The provisional canon contained a section which reenacted the obligation of each diocesan bishop to owe allegiance to the metropolitan. This clause had little practical effect for this diocese since, except for short periods between the retirement of one archbishop and the election of another, in New South Wales the Archbishop of Sydney is always the Metropolitan. The deletion of the section from the Canon is not of concern.

11. The Canon expressly provides that it affects the order and good government of the Church within a diocese and does not come into force in a diocese unless and until the diocese adopts the canon by ordinance of the synod of the diocese.

Recommendation

12. The Standing Committee recommends that the Synod pass the Canon.

For and on behalf of the Standing Committee

MARK PAYNE

Legal Officer

19 August 1993