

## General Synod Legislation 1998

(A report from the Standing Committee.)

<i>Contents</i>	<i>Item</i>
Introduction	1-3
Canons Passed by the General Synod in 1998	4-5
Canons in Force	6-7
Canons for Adoption by our Synod	8-11
Canons for Assent by our Synod	12-14
Provisional Canon	15-16
Summary of Recommendations	17-20
Annexure 1 - Oaths, Affirmations, Declarations and Assents Canon 1992	
Annexure 2 - Constitution (Suspension from Duties) Canon 1998	
Annexure 3 - Metropolitan Canon 1998	

χ χ χ χ χ χ

### Introduction

- 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.
- 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.
- 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 1998

- In 1998 the General Synod passed the following canons -
  - Anglican Board of Missions - Australia Canon (Amendment) Canon 1998*
  - Anglican Superannuation Australia (Amendment) Canon 1998*
  - Appellate Tribunal (Amendment) Canon 1998*
  - Bishop (Incapacity) (Amendment) Canon 1998*
  - Canon Concerning Baptism 1992*
  - Canon Concerning Services 1992*
  - Canon Concerning Confirmation 1992*
  - Constitution Alteration (Committees Appointment) Canon 1998*
  - Constitution Alteration (Composition of General Synod) Canon 1998*
  - Constitution Alteration (Discipline Clarification) Canon 1998*
  - Constitution Alteration (Suspension from Duties) Canon 1998*
  - Constitution Alteration (Tribunals) Canon 1998*
  - Defence Force Board Canon Amendment Canon 1998*
  - National Aboriginal and Torres Strait Islander Anglican Council Canon 1998*
  - National Superannuation and Retirement Council (Repeal) Canon 1998*
  - New South Wales Constitution Ratification Canon 1998*
  - Oaths Affirmations Declarations and Assents Canon 1992*
  - Offences Canon Amendment Canon 1998*

*Revised Constitution Amendment (Interpretation) Canon 1998*  
*Special Tribunal Procedure (Amendment) Canon 1998*  
*Strategic Issues, Task Forces and Other Bodies Canon 1998*

5. The General Synod also passed the Metropolitan Canon 1998 as a provisional canon.

### **Canons in Force**

6. *The Constitution Alteration (Committees Appointment) Canon 1998* amends section 35 of the 1961 Constitution to expressly state that the power to appoint the boards of assessors, committees, boards or commissions of General Synod may be exercised by the General Synod itself, or by the Standing Committee of General Synod. This canon has already taken effect because it passed with the requisite majorities required by section 67(1)(a)(i) of the Constitution.

7. There are a number of other canons which have taken effect because they do not affect the order and good government of the Church in a diocese. Those canons are -

*Anglican Board of Missions - Australia Canon (Amendment) Canon 1998*  
*Appellate Tribunal (Amendment) Canon 1998*  
*Defence Force Board Canon Amendment Canon 1998*  
*National Aboriginal and Torres Strait Islander Anglican Council Canon 1998*  
*National Superannuation and Retirement Council (Repeal) Canon 1998*  
*New South Wales Constitution Ratification Canon 1998*  
*Special Tribunal Procedure (Amendment) Canon 1998*  
*Strategic Issues Task Forces and Other Bodies Canon 1998.*

### **Canons for Adoption by our Synod**

8. The following canons affect the order and good government of the Church in a diocese and must be adopted by our Synod before they have effect in Sydney -

*Canon Concerning Baptism 1992*  
*Canon Concerning Services 1992*  
*Canon Concerning Confirmation 1992*  
*Offences Canon Amendment Canon 1998*

9. The Standing Committee recommends that each of the canons referred to in 8 be adopted: see the separate explanatory statements and bills.

10. *The Bishop (Incapacity) (Amendment) Canon 1998* corrects cross referencing errors in the Bishop (Incapacity) Canon 1995 (printed on pages 415 to 419 inclusive of the 1997 Yearbook). By resolution 4/96 the Synod deferred consideration of the Bishop (Incapacity) Canon 1995 until after receipt of the report of the Select Committee on Clerical Enquiries. That report was received by the Synod in 1997 but consideration of its recommendations has not been concluded. The Standing Committee recommends that further consideration of the Bishop (Incapacity) Canon 1995 and the Bishop (Incapacity) (Amendment) Canon 1998 be deferred until after consideration of those recommendations has been concluded.

11. The Oaths, Affirmations, Declarations and Assents Canon 1992 repeals old canon law concerning oaths and the Form of Declaration and Assent Canon 1977, and substitutes new rules in their place. A copy of the canon is set out in Annexure 1 to this report. The Standing Committee recommends that the Synod defer further consideration of this canon until the 1st session of the 45th Synod.

### **Canons for Assent by our Synod**

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

*Constitution Alteration (Composition of General Synod) Canon 1998*  
*Constitution Alteration (Discipline Clarification) Canon 1998*  
*Constitution Alteration (Suspension from Duties) Canon 1998*  
*Constitution Alteration (Tribunals) Canon 1998*  
*Revised Constitution Amendment (Interpretation) Canon 1998*

13. The Standing Committee recommends that assent be given to each of the canons referred to in 12 except the *Constitution Amendment (Suspension from Duties) Canon 1998*: see the separate explanatory statements and bills.

14. A separate report on the *Constitution Amendment (Suspension from Duties) Canon 1998* is set out in Annexure 2 to this report. The grounds for withholding assent are set out in Annexure 2 and are repeated in 19 below.

**Provisional Canon**

15. The Metropolitan Canon 1998 seeks to codify the authorities, powers, rights and duties of a metropolitan. Among other things, the canon prohibits the use of the oath of obedience by a bishop to his metropolitan in the order for the consecration of a bishop found in each of the *Book of Common Prayer*, *An Australian Prayer Book* and *A Prayer Book for Australia*. A copy of this provisional canon is set out in Annexure 3 to this report.

16. The Standing Committee recommends that the Synod defer further consideration of this provisional canon until the 1st session of the 45th Synod.

**Summary of Recommendations**

17. Synod defer further consideration of the Bishop (Incapacity) Canon 1995 and the *Bishop (Incapacity) (Amendment) Canon 1998* until after consideration of the recommendations of the Select Committee on Clerical Enquiries is concluded.

18. Synod defer further consideration of the *Oaths, Affirmations, Declarations and Assents Canon 1998* and the Metropolitan Canon 1998 until the 1st session of the 45th Synod.

19. Synod withhold assent to the *Constitution (Suspension from Duties) Canon 1998* because the proposed subsection 61(2) is without adequate limits in so far as -

- (a) it will enable a synod to provide for a bishop to suspend a licensed member of the clergy on any grounds and, in particular, grounds which are unrelated to allegations of misconduct; and
- (b) it will enable a synod to authorise the suspension of a member of the clergy for an unlimited time.

20. Synod adopt or assent, as the case may be, all other canons made by the General Synod in 1998, being canons which require the adoption or assent of Sydney: see the separate explanatory statements and bills.

For and on behalf of the Standing Committee.

MARK PAYNE  
*Diocesan Secretary*

14 August 1998

**Annexure 1**

**Oaths, Affirmations, Declarations and Assents Canon 1992**

Canon No. 15, 1998

A canon concerning Oaths Affirmations Declarations and Assents

The General Synod prescribes as follows -

**Short title**

1. This canon may be cited as the "Oaths Affirmations Declarations and Assents Canon 1992".

**Oath or Affirmation of Canonical Obedience**

2. An oath or affirmation of canonical obedience shall be taken by a member of the clergy on
- (a) ordination to the diaconate,
  - (b) ordination to the priesthood,
  - (c) first licensing of the member by the bishop of a diocese
    - (i) that member not having been ordained to the diaconate or priesthood in the diocese, or
    - (ii) following service by that member outside the diocese pursuant to the licence of another bishop, and
  - (d) consecration as an assistant bishop

**Form of Oath or Affirmation of Canonical Obedience**

3. (1) Whenever an oath of canonical obedience is taken by a member of the clergy or laity the following form shall be used -

"I ..... do swear that I will pay true and canonical obedience to .....  
[the bishop of the diocese or where applicable the bishop of the diocese sponsoring an

ordination] and the successors of that bishop in all things lawful and honest. So help me God!".

(2) Whenever an affirmation of canonical obedience is taken by a member of the clergy or laity, the form in sub-section (1) shall be used but it shall be modified by -

- (a) substituting for "swear" the phrase "solemnly and sincerely affirm"; and
- (b) deleting the concluding sentence.

**Declaration and Assent to Doctrine and Formularies**

4. A declaration and assent to the doctrine and formularies of the Church shall be made by a member of the clergy on -

- (a) ordination to the diaconate,
- (b) ordination to the priesthood,
- (c) first licensing of the member by the bishop of a diocese
  - (i) that member not having been ordained to the diaconate or priesthood in the diocese, or
  - (ii) following service by that member outside the diocese pursuant to the licence of another bishop,
- (d) consecration as an assistant bishop,
- (e) consecration or installation as the bishop of a diocese, and by a member of the laity on
- (f) first licensing of that member by the bishop of a diocese.

**Form of declaration and assent to doctrine and formularies**

5. Whenever a declaration and assent to the doctrine and formularies of the Church is made by a member of the clergy the following form shall be used -

"I..... firmly and sincerely believe the Catholic Faith and I give my assent to the doctrine of The Anglican Church of Australia as expressed in the Book of Common Prayer and the Ordering of Bishops, Priests and Deacons and the Articles of Religion, as acknowledged in section 4 of the Constitution, and I believe that doctrine to be agreeable to the word of God.

I declare my assent to the Fundamental Declarations of The Anglican Church of Australia as set out in sections 1, 2 and 3 of the Constitution.

In public prayer and administration of the sacraments I will use the form prescribed in the Book of Common Prayer or a form authorised by lawful authority and none other."

**Assent to Constitutions and Laws**

6. An assent to the constitutions and laws of the Church shall be required of a member of the clergy on

- (a) ordination to the diaconate,
- (b) ordination to the priesthood,
- (c) first licensing of the member by the bishop of a diocese
  - (i) that member not having been ordained to the diaconate or priesthood in the diocese, or
  - (ii) following service by that member outside the diocese pursuant to the licence of another bishop,
- (d) consecration as an assistant bishop,
- (e) consecration or installation as the bishop of a diocese, and by a member of the laity on
- (f) first licensing of that member by the bishop of the diocese.

**Form of Assent to Constitutions and Laws**

7. (1) Subject to sub-sections (2) and (3), whenever an assent to the constitutions and laws of the Church is made by a member of the clergy or the laity the following form shall be used -

"I ..... do solemnly and sincerely declare my assent to be bound by the Constitution of the Anglican Church of Australia and the Constitution of the province of ..... and of this diocese and by the canons, statutes, ordinances and rules, however described, from time to time of the synod of this diocese and of the General Synod and the provincial synod (or council) which have force in this diocese."

(2) The form prescribed in sub-section (1) may be varied by deleting provincial references in a diocese which is not within a province.

(3) In a diocese in which a provision of the constitution of the diocese which is in force and which was in force on 1 January 1998 prescribes a different form of assent the diocesan form may be used instead of the form in sub-section (1).

#### **Diocesan Provision**

8. (1) Nothing in this canon prevents the bishop or synod of a diocese requiring or providing for the use of any of the oaths, affirmations, declarations and assents referred to in this canon on occasions additional to those provided in this canon.

(2) Unless the bishop or synod of a diocese otherwise requires or provides, a person to be consecrated, ordained, instituted or licensed in this Church within the diocese is not required to take, make or subscribe to an oath, affirmation, declaration, assent or subscription not provided for or referred to in this canon.

#### **Substantial Compliance**

9. A deviation from the form of an oath, affirmation, declaration or assent prescribed in this canon which does not materially affect the substance shall be sufficient compliance with the requirements of this Canon.

#### **Canon 36 of 1603 Repealed**

10. Except to the extent that it requires a person to be licensed by the bishop of the diocese, the Canon numbered 36 of the Canons of 1603, insofar as it may have had any force either in its original form or as amended, shall have no operation or effect in a diocese which adopts this Canon.

#### **Canon 7, 1973 Repealed**

11. The Form of Declaration and Assent Canon 1973 is repealed.

#### **Canon Affects Dioceses**

12. 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.

## **Annexure 2**

### **Constitution (Suspension from Duties) Canon 1998**

1. The canon is printed in the schedule which follows this report.

#### **What the Canon does**

2. Section 61 of the Constitution of the Anglican Church of Australia (the "Constitution") provides that -

"Where a charge is pending before a tribunal against any person licensed by the bishop of a diocese, the bishop with the concurrence of the diocesan council may suspend such person from the duties of his office until the determination of the charge, and may make such arrangements for the performance of the duties of the office as may be authorised by canon ordinance or rule or in the absence of such canon ordinance or rule as the bishop may deem proper."

3. The canon seeks to amend section 61 in 2 respects.

4. First, it seeks to omit the words "is pending" and insert instead the words "has been promoted".

5. Secondly, it seeks to insert a new subsection (subsection 61(2)) in the following terms -

"(2) It is hereby declared that a synod of a diocese is empowered to make provision for a bishop of a diocese to suspend a person who is or may be liable to the jurisdiction of the diocesan tribunal from the duties of his or her office. In particular provision may be made for such suspension in any case where it appears to such bishop that the same is for the good of the diocese or any particular parish or organization of the diocese. The synod of each diocese is authorized by ordinance to define the occasions on which or conditions under which such power may be exercised and may provide for a person so suspended to receive income and accommodation including accommodation for him or her and his or her immediate family, during the period of suspension."

6. Under section 67(1)(c) of the Constitution, this canon will not come into effect unless at least  $\frac{3}{4}$  of the diocesan synods, including all of the metropolitan sees, have assented to it by ordinance with all such assents to be in force at the same time.

### **Comments**

7. The substitution of the words "is pending" with the words "has been promoted" is not objectionable.
8. However the Standing Committee is unable to recommend that the Synod assent to this canon since it is concerned about the width of the powers proposed to be given under proposed subsection 61(2). While the Committee agrees that the synod of a diocese must have power to provide for the suspension of a member of the clergy in circumstances other than when a charge has been promoted, the Standing Committee considers that proposed subsection 61(2) is without adequate limits -
  - (a) it enables the synod to provide for a bishop to suspend a licensed member of the clergy on any grounds and, in particular, grounds which are unrelated to allegations of misconduct;
  - (b) it enables the synod to authorise suspension of a member of the clergy for an unlimited time.
9. The Standing Committee recommends to the Synod that assent not be given to the canon for the reasons set out in 8.
10. A revised form of the canon is being prepared which may address the Standing Committee's concerns. In due course, the Standing Committee hopes to submit a revised form to the General Synod for its consideration.

### **Schedule**

#### **Constitution (Suspension from Duties) Canon 1998**

Canon No. 9, 1998

A Canon to clarify the powers of suspension from duties

The General Synod prescribes as follows:-

1. This canon may be cited as the "Constitution Alteration (Suspension from Duties) Canon 1998".
2. Section 61 of the Constitution is amended by substituting "has been promoted" for "is pending".
3. Section 61 of the Constitution is further amended by classifying the existing provision as 61(1) and by adding the following:-

"(2) It is hereby declared that a synod of a diocese is empowered to make provision for a bishop of a diocese to suspend a person who is or may be liable to the jurisdiction of the diocesan tribunal from the duties of his or her office. In particular provision may be made for such suspension in any case where it appears to such bishop that the same is for the good of the diocese or any particular parish or organization of the diocese. The synod of each diocese is authorized by ordinance to define the occasions on which or conditions under which such power may be exercised and may provide for a person so suspended to receive income and accommodation including accommodation for him or her and his or her immediate family, during the period of suspension."

### **Annexure 3**

#### **Metropolitan Canon 1998**

Canon No. P1, 1998

A canon concerning the authorities powers rights and duties of a metropolitan and to amend "An Australian Prayer Book" and "A Prayer Book for Australia" in certain respects

The General Synod prescribes as follows -

1. This Canon may be cited as the "Metropolitan Canon 1998".
2. In this Canon, unless the contrary intention appears:

"An Australian Prayer Book" means the prayer book authorised for use in this Church by the Australian Prayer Book Canon 1977;

"A Prayer Book for Australia" means the prayer book authorised for use in this Church by the Prayer Book for Australia Canon 1995.
3. A Metropolitan shall have no authorities, powers, rights and duties other than -
  - (a) those conferred or imposed -
    - (i) by the Constitution;

- (ii) by any Act of Parliament;
- (iii) by the Constitution of the relevant Province;
- (iv) by Ordinance of the relevant Provincial Synod;
- (v) subject to Section 4, by Ordinance of a Diocesan Synod within the relevant Province; or
- (vi) by Canon of General Synod

and

- (b) subject to the above, the right to encourage, to advise and to warn any Diocesan Bishop within the relevant Province, or should the See be vacant, the person appointed by or under the constitution of the diocese to administer the affairs of the diocese.

4. If a provision of an Ordinance of a Diocesan Synod (other than the Synod of the Metropolitan See) purports to impose a duty on the Metropolitan, the provision shall not take effect unless the Metropolitan shall have assented in writing to the Ordinance, and thereafter the duty shall bind the Metropolitan.

5. If "The Form of Ordaining or Consecrating of an Archbishop or Bishop" contained in the Book of Common Prayer is used, the Oath of due Obedience to the Archbishop is not to be administered.

6. The service entitled "The Consecrating of a Bishop" in An Australian Prayer Book is amended by deleting, in paragraph 5, the words "including the customary oath of due obedience to the archbishop".

7. The service entitled "The Ordination of Bishops" in A Prayer Book for Australia is amended by deleting paragraphs 14 and 15 and inserting new paragraphs in lieu thereof and by inserting new note 9, in accordance with the Schedule.

8. Nothing in sections 5, 6 and 7 affects any obligation of a person chosen as an assistant bishop to take an oath of canonical obedience to the Diocesan Bishop.

9. 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, by Ordinance, adopts it.

#### **The Schedule**

New paragraphs 14 and 15 of the Service entitled "The Ordination of Bishops" in A Prayer Book for Australia

14. *The archbishop says to the bishop(s)-elect*

NN, you have been chosen to serve as a bishop in the Church of God, and serve as the bishop of the diocese of M in the Anglican Church of Australia.

In accordance with the law of our Church, I now require you to declare your assent to the Constitution and Canons of this Church.

*The bishop(s)-elect assent(s) to the Constitution and Canons of the Anglican Church of Australia.*

I, NN, do solemnly and sincerely declare my assent to be bound by the Constitution of The Anglican Church of Australia [and the Constitution of the Province of ..... ] and of this diocese and by the canons, statutes, ordinances and rules, however described, from time to time of the synod of this diocese and of the General Synod [and of the *Provincial Synod/Provincial Council*] which have force in this diocese.

*The bishop(s)-elect then sign(s) the necessary Assents in the sight of all present, and the witnesses add their signatures.*

15. *The archbishop addresses the assembled people, saying*

Dear friends in Christ, you have heard testimony given that NN have been duly and lawfully elected to be bishop(s) in the Church of God, and have made the Assents required by the Canons of this Anglican Church of Australia.

We ask you to declare,

do you accept NN, to minister as bishop(s)?

*The people respond*

By the grace of God, we do.

Will you then uphold and support NN as bishop(s)?

By the grace of God, we will."

New note 9 to the Service entitled "The Ordination of Bishops" in A Prayer Book for Australia

9. The form of assent set out in ¶14 may be varied by deleting provincial references in a diocese which is not within a province. If a diocesan constitution, as at 1 January 1998, prescribes a different form of assent the diocesan form may be used instead.