

General Synod Legislation

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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 98 to 125 inclusive of *The Sixth Handbook*), the General Synod has power to make canons in relation to 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 good order and 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 in 1992

- In 1992 the General Synod passed the following canons -
 - Appellate Tribunal Canon Amendment Canon 1992 (No. 1 of 1992)*
 - Primate Canon Amendment Canon 1992 (No. 2 of 1992)*
 - National Anglican Centre Canon 1985 Repeal Canon 1992 (No. 3 of 1992)*
 - NSW Provincial Synod Representative Canon 1992 (No. 4 of 1992)*
 - General Synod Commissions Amendment Canon 1992 (No. 5 of 1992)*
 - Tallimba Land Diocesan Boundary Alteration Canon 1992 (No. 6 of 1992)*
 - Constitution Amendment (Section 51) Canon 1992 (No. 7 of 1992)*
 - Long Service Leave Canon 1992 (No. 8 of 1992)*
 - Canon Concerning Authority on Certain Matters 1992 (No. 9 of 1992)*
 - Canon Concerning Confessions 1992 (No. 10 of 1992)*
 - Canon Law Repeal Canon 1989 (No. 11 of 1992)*
 - Special Tribunal Procedure Canon 1992 (No. 12 of 1992)*
 - Constitution Alteration (Section 17 and 23) Canon 1992 (No. 13 of 1992)*
 - Constitution Alteration (Miscellaneous Sections) Canon 1992 (No. 14 of 1992)*
 - Alternative Tables of Lessons Amendment Canon 1992 (No. 15 of 1992)*
 - Australian College of Theology Canon 1966 Amending Canon 1992 (No. 16 of 1992)*
 - Authorised Lay Ministry Canon 1992 (No. 17 of 1992)*
 - Law of the Church of England Clarification Canon 1992 (No. 18 of 1992)*

Provisional Canons Passed in 1992

5. In 1992 the General Synod passed the following provisional canons -

- Law of the Church of England Clarification Canon 1992 (No. P1 of 1992)*
- Canon Concerning Vesture of Ministers 1992 (No. P2 of 1992)*
- Oaths Declarations and Assents Canon 1992 (No. P3 of 1992)*
- Canon Concerning the Holy Communion or the Lord's Supper 1992 (No. P4 of 1992)*
- Canon Concerning Baptism 1992 (No. P5 of 1992)*
- Canon Concerning Services of the Church 1992 (No. P6 of 1992)*
- Canon Concerning Confirmation 1992 (No. P7 of 1992)*

Review of Canons and Provisional Canons Passed in 1992

6. The canons and provisional canons passed by the General Synod in 1992 have been reviewed by the General Synod Canons Committee which in turn has reported to the Standing Committee. The Standing Committee has considered that report and has formulated recommendations on the action (if any) which the Synod should take in relation to the canons and provisional canons.

Canons where no action is required

7. The Standing Committee is of the view -

- (a) that the canons listed below do not affect the order and good government of the church in this diocese;
- (b) that those canons came into effect according to their terms without the need for the assent or adoption of the Synod; and
- (c) that no further action is required of the Synod in respect of those canons.

- Primate Canon Amendment Canon 1992 (No. 2 of 1992)*
- National Anglican Centre Canon 1985 Repeal Canon 1992 (No. 3 of 1992)*
- General Synod Commissions Amendment Canon 1992 (No. 5 of 1992)*
- Tallimba Land Diocesan Boundary Alteration Canon 1992 (No. 6 of 1992)*
- Australian College of Theology Canon 1966 Amending Canon 1992 (No. 16 of 1992)*

Canons already in force

8. The *NSW Provincial Synod representative Canon 1992 (No.4 of 1992)* is already in force and no further action is required.

9. The Long Service Leave Canon 1992 (No. 8 of 1992) was adopted by the Synod in 1992. No further action is required in relation to this canon, which is now in effect.

Canons to be adopted

10. The Standing Committee is of the view that the *Appellate Tribunal Canon Amendment Canon 1992 (No. 1 of 1992)* and the *Special Tribunal Procedure Canon 1992 (No. 12 of 1992)* may affect the order and good government of the church in this diocese. Accordingly, before those canons have effect in this diocese the Synod must, by ordinance, adopt those canons. The Standing Committee recommends that the Synod adopts those canons. Bills for ordinances to adopt these canons together with explanatory statements have been prepared for the consideration of the Synod.

11. The *Canon Concerning Authority on Certain Matters Canon 1992 (No. 9 of 1992)* and the *Canon Concerning Confessions Canon 1992 (No. 10 of 1992)* expressly provide that they affect the order and good government of the church in a diocese. Accordingly, before those canons have effect in this diocese the Synod must, by ordinance, adopt the canons. The Standing Committee recommends that the canons be adopted. Bills for adopting ordinances together with explanatory statements have been prepared for the consideration of the Synod.

12. The *Canon Law Repeal Canon 1992 (No. 11 of 1992)* also expressly provides that it affects the order and good government of the church in a diocese. The Standing Committee recommends that this canon be adopted subject to preserving the operation of certain of the Canons of 1603 to which the canon applies. A bill for an adopting ordinance together with an explanatory statement has been prepared for the consideration of the Synod.

Canons to receive assent

13. The *Constitution Alteration (Section 17 and 23) Canon 1992 (No. 13 of 1992)* and the *Constitution Alteration (Miscellaneous Sections) Canon 1992 (No. 14 of 1992)* both purport to make changes to the Constitution. Under the Constitution the canons will not take effect unless the Synod assents to the canons. The Standing Committee recommends that assent be given. Bills for assenting ordinances together with explanatory statements have been prepared for the consideration of the Synod.

Other Canons

14. The *Constitution Amendment (Section 51) Canon 1992 (No. 7 of 1992)* was passed by the Sydney Synod but was not assented to by the former Archbishop. The Standing Committee does not recommend that assent be given to this canon but rather recommends the limitation of its scope. A separate report has been prepared in respect of this canon.

15. The Standing Committee has referred the *Alternative Tables of Lessons Amendment Canon 1992 (No. 15 of 1992)* to the Diocesan Liturgical Commission for its advice. The Standing Committee recommends that no further action be taken in relation to this canon until a report from the Diocesan Liturgical Commission has been received.

16. The Standing Committee recommends that the *Authorised Lay Ministry Canon 1992 (No. 17 of 1992)* be deferred until after the first session of the 43rd Synod and be reconsidered in light of any decisions taken at that session in relation to the Deaconesses, Readers and Other Lay Persons Ordinance 1981. The diocese already has laws for lay ministry which may be preferable to those in this canon.

17. The Sydney Synod did not assent to the *Law of the Church Clarification Canon 1992 (No. P1 of 1992)* in 1992. A canon in the same terms as the provisional canon was subsequently passed by the General Synod in November 1992 as Canon No. 18 of 1992. In light of the Synod's rejection of the provisional canon, the Standing Committee is not promoting the adoption of the *Law of the Church of England Clarification Canon 1992 (No. 18 of 1992)*.

Provisional Canons - Assent

18. The Standing Committee recommends that the Synod assent to the following provisional canons (see item 3 for procedures) -

Canon Concerning Vestures of Ministers (No. P2 of 1992)

Canon Concerning the Holy Communion or the Lord's Supper (No. P4 of 1992)

Canon Concerning Baptism (No. P5 of 1992)

Canon Concerning Services of the Church (No. P6 of 1992)

Canon Concerning Confirmation (No. P7 of 1992)

19. Bills for assenting ordinances together with explanatory statements have been prepared for the consideration of the Synod.

Provisional Canons - Dissent

20. Having regard to Synod resolution 33/92, the Standing Committee recommends that the Synod dissent from the Oaths Declarations and Assent Canon 1992 (No. P3 of 1993). A separate report has been prepared.

Other Canons and Bills

21. In 1989 the General Synod passed the *Constitution Alteration (Making of Canons) Canon 1989 (No. 5 of 1989) and Bill (No. 2 of 1989)*. The canon and bill were not assented to at the 1991 Synod session. The Standing Committee now recommends that the Synod assent to the canon and bill. A bill for an assenting ordinance and an explanatory statement have been prepared for the consideration of the Synod.

22. Our Synod passed an ordinance assenting to the *Constitution Alteration (Canonical Fitness) Canon and Bill 1989* in 1990, but it was not assented to by the previous Archbishop. The Standing Committee is reviewing this matter with the Archbishop.

23. The General Synod Standing Committee asked if the Sydney Diocese would assent to the Bill to Alter the Constitution with Respect to the Mode of Appointment of the Appellate Tribunal 1981, rejected by the Sydney Synod in 1982. We have advised the Standing Committee of the General Synod that -

- (a) the paragraph proposed to be omitted by Bill 2/81, however unsatisfactory its language, embodies the principle that members of the Appellate Tribunal are chosen by the General Synod, which principle will be lost from the 1961 Constitution if the paragraph is deleted; and
- (b) the amendment is embodied in a Bill only, rather than a Bill and a Canon.

For and on behalf of the Standing Committee.

MARK PAYNE
Legal Officer

31 August 1993

Constitution Amendment (Section 51) Canon 1992

(A report from the Standing Committee)

Text of the Canon

1. The text of this canon is reproduced with this report.

Comments on the Canon

2. Under section 67(1)(d) of the constitution of the Anglican Church of Australia ("Constitution") this canon does not have effect unless and until at least three-quarters of the diocesan synods including all metropolitan sees have assented to it by ordinance and all the assents are in force at the same time.
3. The purpose of the canon is -
 - (a) to amend s.51 of the Constitution so as to authorise the Synod of a diocese to make ordinances for or relating to the order and good government of the church within the dioceses, including in respect of discipline, and to deal with matters relating thereto; and
 - (b) to amend the table annexed to the Constitution in respect of clerical representatives at General Synod.
4. The canon was passed by the Sydney Synod in 1992 but did not receive assent. In addition, the assents of the dioceses of Perth and Brisbane, also needed before the amendments can take effect, have not been given. It may well be that, with the passing of the legislation which allows women to be made priests in some parts of Australia, the requisite number of assents will not be given.
5. In support of the canon, the following may be said -
 - (a) Although the amendments to the Constitution envisaged by the canon add nothing to the powers of the Synod of this diocese, that is not the case elsewhere. In particular, the Synods of the dioceses in Victoria have very few powers and the amendments will be of assistance to those Synods.
 - (b) At present, in general terms, representation on the General Synod is on the basis of the persons in priest's orders who hold a licence in the diocese. The ordination of women as priests will have the effect of increasing the representation on the General Synod of those dioceses in which such ordination is permissible and women priests are licensed. In consequence, the proportion of that membership of the General Synod of a Synod which does not allow for the appointment of ordained women priests to appropriate positions in the diocese will decrease. Sydney's membership has been estimated as falling from about 22% (although Sydney represents approximately 40% of all Australian Anglicans) to 16%. The amendments to the Constitution envisaged by the canon allow for deacons (of either sex) as well as priests to be counted in determining the number of representatives of a diocese. Hitherto, deacons have been excluded from the count. Thus, if the amendments are made, the proportionate representation of Sydney on the General Synod will not drop to the same extent. It needs to be pointed out that, except as regards some amendments to the Constitution (those made under s.67(1)(b)), a drop in membership does not matter although, no doubt, the evangelical influence on the General Synod, already a minority, will be reduced by any such drop.
6. In favour of not supporting the canon, the following may be said -
 - (a) Since General Synod assessments are presently determined on the basis of number of representatives, a decrease in the proportion of Sydney representatives will result in a drop in assessments vis-a-vis a diocese whose representation has increased in consequence of the appointment in the diocese of women priests.
 - (b) The amendment confers power on the Appellate Tribunal to review the ordinances of any diocese as against the Constitution. At present, it is debatable if the Appellate Tribunal has such power although, on one view, it has proceeded in some instances, as if it has. It is conceivable, for example, that if the canon were to come into effect, an Appellate Tribunal would declare invalid an ordinance of the Sydney Synod which the Synod considered to be wholly consistent with scripture but which the Tribunal regarded as inconsistent with its view of scripture.
7. On balance the Standing Committee is of the view that the Synod should not assent to the canon. However, if the power of the Appellate Tribunal was limited to ordinances made under proposed section 51 only, the Standing Committee would recommend that assent be given.

Recommendation

8. The Standing Committee recommends to the Synod that the Synod request that the canon be amended so that the power conferred on the Appellate Tribunal is limited to a power to review ordinances under the powers conferred by the amendment to s.51.

For and on behalf of the Standing Committee.

MARK PAYNE

Legal Officer

31 August 1993

Constitution Amendment (Section 51) Canon 1992

The General Synod prescribes as follows -

1. This Canon may be cited as the Constitution Amendment (Section 51) Canon 1992.
2. Section 51 of the Constitution is deleted and the following section is inserted in lieu thereof -
 51. (1) Subject to the terms of this Constitution the synod of a diocese may make ordinances for or relating to the order and good government of this Church within the diocese, including ordinances in respect of discipline.
 - (2) An ordinance of the synod of a diocese must be made in accordance with the procedure in that behalf prescribed by or under the constitution of the diocese.
 - (3) An ordinance may be for or relating to the order and good government of this Church within the diocese notwithstanding that it may have some effect outside the diocese or may relate to some matter affecting the order and good government of this Church which is within the powers of General Synod.
 - (4) An ordinance of the synod of a diocese that is inconsistent with this Constitution or with a canon of General Synod in force in the diocese is, to the extent of the inconsistency, of no effect.
 - (5) It is declared for the avoidance of doubt that nothing in this section prevents the synod of a diocese from making ordinances under this section in respect of ordination or anything relating thereto.
 - (6) The Primate may refer to the Appellate Tribunal any question whether a particular ordinance of the synod of a diocese is of no effect because of an inconsistency referred to in subsection (4), and section 63 does not apply to any such question.
 - (7) The answer of the Appellate Tribunal on a question referred to it under subsection (6) is final.
 - (8) A provision of an ordinance of the synod of a diocese -
 - (a) made before the date on which this section comes into effect; and
 - (b) in force before that date or to come into operation or effect after that dateis as valid and effective as it would have been if this section had been in force at the time the ordinance was made.
 - (9) Subsection (8) does not apply to a provision that -
 - (a) was invalid or ineffective before the date on which this section comes into effect; and
 - (b) would have been invalid or ineffective even if this section had been in force at the time the provision was made.
3. (1) Paragraph 1 of the Table Annexed to the Constitution (hereinafter is called "The Table") is amended by deleting therefrom the word "clergymen" and by inserting in lieu thereof the words "the clergy".
 - (2) The first sentence of paragraph 3 of the Table is amended by -
 - (a) deleting the word "clergymen" and by inserting in lieu thereof the words "the clergy"; and
 - (b) deleting the words "priests' orders" and by inserting in lieu thereof the words "priests' orders or in deacons' orders and, in each case,".
 - (3) The second sentence of paragraph 3 of the Table is amended by -
 - (a) inserting after the words "priests' orders" (first occurring) the words "or in deacons' orders"; and
 - (b) deleting the words "clergyman in priests' orders" and inserting in lieu thereof the words "person in priests' orders or in deacons' orders".

Oaths, Declarations and Assents Canon 1992

(A report from the Standing Committee)

Provisional Canon P3, 1992

1. The Oaths, Declarations and Assents Canon 1992 (reproduced with this report) is a provisional canon of the General Synod which will not become a canon unless -
 - (a) every diocese assents to it and the President of the General Synod declares it to be in force; or
 - (b) it is passed as a canon at the next session of the General Synod by at least two-thirds of the members, after considering the assents/dissents/reports from the diocesan synods.
2. Last year our Synod passed a resolution that "no oath should be required so as to bind the conscience of clergy or laity contrary to the teachings of Holy Scripture or by anything which is not part of the law of this Church".
3. This report is based on reports from our General Synod Canons Committee and our Legal Committee.

The "Oaths, Declarations and Assents"

4. The Provisional Canon provides for -
 - (a) an oath - called an oath of canonical obedience; and
 - (b) an assent to the constitutions and laws of the Church.
5. The forms are to be found in clauses 3 and 6 of the Provisional Canon respectively. A deviation from the forms is permitted provided the deviation does not "materially affect the substance" - see clause 8 of the Provisional Canon.

Declaration and Assent to Doctrine and Formularies

6. The Provisional Canon also envisages that there will be a "declaration and assent to the doctrine and formularies of the Church" but does not prescribe any form. It may be that the person who drafted the Provisional Canon had in mind the form prescribed by the Form of Declaration and Assent Canon 1973. If this is the case, it is desirable, for the removal of doubt, that this be stated.

Oath of Canonical Obedience

7. As regards the oath of canonical obedience, the Privy Council said in *Long v. The Bishop of Cape Town* (1 Moore N.S.411) in 1863 (at p.465) -

"The oath of canonical obedience does not mean that the clergyman will obey all of the commands of the Bishop against which there is no law, but that he will obey all such commands as for the Bishop by law is authorised to impose...."
8. The oath in Long's case was, in substance, in identical terms to the form of oath described by the Provisional Canon and having regard to the effect given to the oath in Long's case, the form in the Provisional Canon is not objectionable.

Assent to Constitutions and Laws

9. By the assent, the clergyman agrees to be bound by -
 - (a) the constitution of the Anglican Church of Australia;
 - (b) where applicable, the constitution of the relevant province;
 - (c) the constitution of the diocese; and
 - (d) the canons, statutes, ordinances and rules, however described, from time to time of -
 - (i) the Synod of the diocese;
 - (ii) the General Synod; and
 - (iii) where applicable, the provisional synod or council, which have force in the diocese.
10. The difficulty with the assent is that if any of the constitutions, canons, statutes, ordinances and rules referred to in item 9. presently contain or in the future include matter which the clergyman cannot assent to, the clergyman is put in the invidious position of being either -
 - (a) bound by that which he cannot in good conscience accept; or
 - (b) obliged to repudiate the assent which he has given.
11. Already, laws have been made by the General Synod which are highly objectionable to a significant minority. The form of assent, in substance, repudiates assurances given at the time to that minority.

Recommendation for Dissent

12. The Standing Committee recommends that the Synod strongly dissent from this Provisional Canon by passing the following resolution -

"This Synod regrets that the General Synod, making the Oaths, Declaration and Assents Canon, 1992, ignored the view of this Synod that no oath should be required so as to bind the conscience of clergy or laity contrary to the teachings of Holy Scripture. This Synod strongly disapproves of the inclusion of Clauses 5 and 6 and the imposition or purported imposition by any bishop of that or any similar undertaking on any clergyman. Accordingly, this Synod withholds assent to the Canon and calls for the deletion of Clauses 5 and 6 of the Canon."

For and on behalf of the Standing Committee

MARK PAYNE

Legal Officer

30 August 1993

Canon No. P3, 1992

A canon concerning Oaths Declarations and Assents

The General Synod prescribes as follows:

Short title

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

Oath of Canonical Obedience

2. An oath 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 of Canonical Obedience

3. 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!".

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.

Assent to Constitutions and Laws

5. 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

6. 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 (where applicable) 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 (where applicable) of the Provincial Synod (or Council)] which have force in this diocese.".

Diocesan Provision

7. (1) Nothing in this canon prevents the bishop or synod of a diocese requiring or providing for the use of any of the oaths, 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, declaration, assent or subscription not provided for or referred to in this canon.

Substantial Compliance

8. A deviation from the form of an oath, 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

9. 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 Affects Dioceses

10. 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.