

General Synod 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 pages 95 to 125 inclusive of *The 6th 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.

2. Not all canons come into effect when they are passed. For example, if 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.

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.

4. In 1993 the Standing Committee reported on the 18 canons and 7 provisional canons passed by General Synod in 1992. That report is printed at pages 423 to 428 inclusive of the 1994 Year Book. Some of those canons and provisional canons have been considered by the Sydney Synod. This report refers only to those canons and provisional canons which are still to be considered by the Sydney Synod. It also refers to certain other canons and bills.

1992 Canons still to be Considered

5. Of the 18 canons passed by the General Synod in 1992 those which remain to be considered by the Sydney Synod are -

Constitution Amendment (Section 51) Canon 1992 (No. 7 of 1992)
Alternative Tables of Lessons Amendment Canon 1992 (No. 15 of 1992)
Authorised Lay Ministry Canon 1992 (No. 17 of 1992)
Law of the Church of England Clarification Canon 1992 (No. 18 of 1992)

6. 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.

7. In 1993 the Standing Committee reported that it had referred *the Alternative Tables of Lessons Amendment Canon 1992 (No. 15 of 1992)* to the Diocesan Liturgical Commission for its advice. A bill for the *Church Ministry (Lessons) Ordinance 1994* is now being promoted and a separate explanatory statement and bill have been prepared. If passed, one of the consequences of the bill will be to permit the continued use of the Alternative Tables of Lessons in Sydney.

8. In 1993 the Standing Committee recommended that the *Authorised Lay Ministry Canon 1992 (No. 17 of 1992)* be deferred and be reconsidered in light of any decisions taken in relation to the Deaconesses, Readers and Other Lay Persons Ordinance 1981. The bill for the Ministry Ordinance 1993 is at the second reading stage and in light of the Standing Committee's recommendation in 1993 no further action is

recommended on this canon until that bill has been dealt with. In addition the Diocese of Sydney already has laws for lay ministry which may be preferable to those in this canon.

9. In light of the Synod's rejection in 1992 of provisional canon No. P1 of 1992, the Standing Committee is not promoting the adoption of the *Law of the Church of England Clarification Canon 1992 (No. 18 of 1992)*.

1992 Provisional Canons still to be Considered

10. In 1992 the General Synod passed 7 provisional canons. The provisional canons which remain to be considered by the Sydney Synod are -

Canon Concerning Vesture of Ministers 1992 (No. P2 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)

11. The Standing Committee recommends that the Synod assent to the 5 provisional canons referred to in item 10 (see item 3 for procedures). Bills for assenting ordinances are at their second reading stage.

Other Canons and Bills

12. The Sydney Synod, in 1990, passed an ordinance assenting to the *Constitution Alteration (Canonical Fitness) Canon and Bill 1989*, but it was not assented to by the previous Archbishop. The Standing Committee had reviewed this matter with the present Archbishop and now recommends that the Synod pass another ordinance to assent to the Canon and Bill. An explanatory statement accompanies the assenting bill.

13. The General Synod Standing Committee has asked if Sydney would assent to the Bill to Alter the Constitution with Respect to the Mode of Appointment of the Appellate Tribunal 1981, Bill No 2 of 1981. The Standing Committee recommends that Synod again withhold assent from the Bill. A separate report has been prepared. *

For and on behalf of the Standing Committee.

MARK PAYNE

Legal Officer

8 August 1994

* See page the next page for this report.

General Synod - Alteration of Constitution: Section 57 Bill No 2, 1981

(A report from the Standing Committee)

Text of the Bill

1. Clause 1 of this Bill reads -

"1. The Constitution of this Church is altered by omitting from Sub-section (1) of Section 57 the paragraph which begins "The members shall be appointed" and which ends "of the House of Laity"."

Comments on the Bill

2. Under S67(1)(d) of the Constitution of the Anglican Church of Australia the Bill does not have effect unless and until at least 75% of the diocesan synods, including the synods of all of the metropolitan sees, have assented to it by ordinance with all such assents in force at the same time.

3. Sydney is the only Diocese which has not assented to the Bill. In 1983 the Synod resolved that it was unwilling to entertain a measure to amend the Constitution which was not in a canon duly made in accordance with the relevant requirements of the Constitution. The General Secretary of the General Synod has recently requested, on behalf of the Standing Committee of the General Synod, that Sydney consider assenting to the bill.

4. Section 57 of the Constitution (pages 114 and 115 of *The 6th Handbook*) deals with the constitution and jurisdiction of the Appellate Tribunal. The first paragraph of Ss57(1) states that the Appellate Tribunal has 7 members, 3 of whom shall be diocesan bishops and 4 of whom shall be laymen. The second paragraph of Ss57(1) provides -

"The members shall be appointed by the General Synod as follows, that is to say, a bishop and a layman on the nomination of the House of Bishops, a bishop and a layman on the nomination of the House of Clergy and a bishop and two laymen on the nomination of the House of Laity."

5. The Bill proposes deleting the second paragraph of Ss57(1) because that paragraph is perceived to give rise to a number of difficulties, including the following -

- (a) The paragraph requires that members of the Appellate Tribunal be appointed only when the General Synod is in session. If a vacancy occurs when the General Synod is not in session, the second paragraph of Ss57(1) could delay the filling of that vacancy and hence the ability of the Tribunal to proceed.
- (b) When appointing a person to the Appellate Tribunal during a session of General Synod the second paragraph of Ss57(1) the only "safe" procedure is to pass a canon to appoint the nominee of the respective houses nominated during a session of General Synod. This can be an extremely clumsy procedure, and if a vacancy occurs at or immediately before a session of General Synod, relies on the good grace of 75% of each house to allow the bill to be introduced.
- (c) There is doubt whether a canon of the type referred to in (b) must be treated as a special bill or be subject to possible disallowance by a diocese under S30, which, if either position were the case, would render the procedure unworkable.

6. Clause 5 of the Appellate Tribunal Canon 1981 provides for the filling of a casual vacancy on the Appellate Tribunal between General Synod sessions. However there is doubt whether clause 5 is valid given the second paragraph of Ss57(1).

7. The deletion of the second paragraph of Ss(1) will overcome the difficulties referred to item 5.

8. The main argument against giving assent is that the principle embodied in S57, namely that members of the Appellate Tribunal are appointed by General Synod in session, would be lost.

9. Notwithstanding the unsatisfactory language of S57, the Standing Committee considers it paramount that the principle of election of members of the Appellate Tribunal by the General Synod in session be maintained. Further the Standing Committee notes that the role of the Appellate Tribunal is under review in the General Synod Constitution Review and it is not desirable to assent to this Bill while this review is taking place.

Recommendation

10. The Standing Committee recommends that the Synod again withhold assent from this Bill for the following reasons -

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- (a) the paragraph of S57 proposed to be amended by the Bill however unsatisfactory its language, embodies the principle that members of the Appeal Tribunal are chosen by the General Synod, a principle which will be lost from the Constitution if the paragraph is omitted; and
- (b) the role of the Appellate Tribunal is under discussion through the Constitution Review Procedure which the General Synod has put in place.

For and on behalf of the Standing Committee.

MARK PAYNE
Legal Officer

16 August 1994