



THE ANGLICAN CHURCH OF AUSTRALIA

# BILLS

*The  
Fifteenth  
General  
Synod*

BOOK

2

Melbourne  
September 2010

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## INTRODUCTION

This Book 2 of the papers for the Fifteenth Session of the General Synod contains Bills to be presented to the General Synod to amend and to make Rules and Canons.

The procedures for making Rules and Canons are set out in Rule I – Standing Orders, particularly Standing Orders 63-66. Rule I is reproduced in Chapter 8 of Book 1 of the Synod Papers, *Synod Process and Elections*.

The Bills are organised into the following parts:

- Part 1** Rules to Amend Rules by request of the Standing Committee
- Part 2** Bills for Canons by request of Standing Committee
- Part 3** Bills under Section 28(3)(iii) and (iv) of the Constitution (Canons provisionally made to be presented as Bills)
- Part 4** Other Rules
- Part 5** Other Bills for Canons

Bills submitted by request of the Standing Committee (Parts 1 and 2) were deemed by the Standing Committee to require priority. This does not mean that the Standing Committee necessarily supports the substance or the terms of any particular Bill in this category.

Bills under Section 28(3)(iii) and (iv) of the Constitution (Part 3), usually referred to as Provisional Canons, were initially Special Bills passed at previous sessions of the General Synod and are now re-presented as Bills because not all Dioceses have assented to them. A report of the responses of Dioceses to these Provisional Canons will appear in Book 3 of the Synod papers, *Standing Committee Report*.

Section 28(3)(iv) of the Constitution requires a majority of at least two-thirds of the members of each of the three Houses present for these Bills to become Canons. However, if before that vote is taken, a majority of the three Houses voting together resolves that the Bill shall be a Provisional Canon only, the whole of the procedure under Section 28(3) must be followed again.

Parts 4 and 5 comprise other Bills for Rules and Canons respectively which do not fall in the categories referred to above.

Members will note that, at the end of the Explanatory Memorandum for each Bill is a note of the body which seeks to promote the Bill or, where there is no Explanatory Memorandum, at the end of the Bill itself and the name of a contact person. This information is given to facilitate obtaining clarification of Bills and negotiation of amendments well in advance of the session of the Synod commencing. Members are strongly encouraged to engage in the process of negotiating amendments as soon as possible in order to minimise loss of time at the Synod.

The column of numbers at the left margin of each Bill denotes line numbers for ease of reference.

## **FORESHADOWED BILLS**

In April 2010, the Standing Committee of General Synod requested the Church Law Commission to prepare the following:

- A Rule to provide for priority to be given to Canons and motions brought by Diocesan Synods and Diocesan Councils;
- A Rule to amend Rule XV to provide for costs and expenses incurred by and in connection with matters arising under the Special Tribunal Canon 2007 and the Episcopal Standards Canon 2007;
- A Bill for a Canon to amend the Episcopal Standards Canon 2007, based on a draft prepared by the Professional Standards Commission.

The Church Law Commission will meet in July 2010 to consider the Standing Committee's request and to complete the drafting of any Bills it considers sufficiently advanced for presentation to this session of the General Synod. The Church Law Commission will also consider Bill R04 and Bills 12-15 which were not available when the Commission last met. Any new Bills or any amendments to the Bills in this Book will be posted on the General Synod website as soon as they become available and hard copy will be sent to members.

## **NOTIFYING AMENDMENTS**

Please note the requirements of Standing Orders 41 to 42A.

Standing Order 42A(a) requires proposed amendments to be notified to the General Secretary in writing prior to 5:00 p.m. on Wednesday, 15 September 2010. Amendments received before that time will be tabled pursuant to Standing Order 7(d)(7).

Standing Order 42A(b) requires amendments proposed after the commencement of the Synod to be provided in writing in duplicate and delivered to a Secretary of the Synod.

It would greatly facilitate preparation of the Amendment Sheet for all proposed amendments to be agreed with the promoters and notified as early as possible before 15 September using the prescribed form on the General Synod website.

If you do not have access to the internet, you can obtain a form from the General Synod Office receptionist.

For amendments notified after the commencement of the Synod, a supply of forms will be available in the General Synod hall.

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## **BILL R01**

### **A RULE TO AMEND RULE I – STANDING ORDERS (STANDING ORDER 34)**

#### **EXPLANATORY MEMORANDUM**

This rule amends time limits for speaking at General Synod.

*Promoter:*      *Church Law Commission*  
*Contact :*      *Mr Ian Walker*



**BILL R01****5                                    A RULE TO AMEND RULE I – STANDING ORDERS  
   (STANDING ORDER 34)****10                    Proposed New Rule 1.34**

15                    34(a) On any motion that a bill be approved in principle or that such bill be  
                                 passed, the mover shall speak for not more than 15 minutes in  
                                 support of the motion, and the seconder shall speak for not more  
                                 than 10 minutes and any other member speaking to the motion and  
                                 the mover speaking in reply shall speak for not more than 5 minutes.

20                    34(b) On any other motion, the mover shall speak for not more than 10  
                                 minutes in support of a motion, and the seconder shall speak for not  
                                 more than 7 minutes and any other member speaking to the motion  
                                 and the mover speaking in reply shall speak for not more than 4  
                                 minutes.

25                    34(c) The provisions of paragraph (b) shall not apply to the member  
                                 representing a point of view different from that of the mover of a  
                                 motion to which Standing Order 37B applies (a group discussion  
                                 motion). In such case, the member shall speak for not more than 10  
                                 minutes.

30                    34(d) Except in Committee of the whole Synod, no member shall be  
                                 allowed to speak more than once on the same question, except in  
                                 explanation. Provided that the mover of any motion, other than a  
                                 motion for an amendment or a motion that the question be now put  
35                                   for the previous question, shall be allowed the right of reply, and  
                                 after the reply the question shall be put forthwith.

40

## **BILL R02**

### **A RULE TO AMEND RULE I – STANDING ORDERS (STANDING ORDER 37B)**

#### **EXPLANATORY MEMORANDUM**

This rule tidies up some existing drafting problems within Standing Order 37B.

*Promoter:*      *Church Law Commission*  
*Contact:*      *Mr Ian Walker*

## BILL R02

### 5                    **A RULE TO AMEND RULE I – STANDING ORDERS (STANDING ORDER 37B)**

#### 10            **Proposed New Rule 37B**

37B(a) Synod may by resolution declare that a motion (not being a motion for a Bill for a Canon or that such Bill be passed) requires group discussion.

15            37B(b) When such a motion has been moved and spoken to by the mover and formally seconded, then:

20                    (i) one member representing a point of view different from that of the mover, shall be invited by the President to speak;

                      (ii) the President shall ask if any member or members wish to ask the mover or other previous speaker any question or questions to assist members to elucidate the purpose and intended effect of the motion, and any member may then ask any such question or questions which may immediately be answered by the mover or other previous speaker;

25

                      (iii) further questions may be asked and answered until the President announces the time for questions has finished;

30                    (iv) the Synod shall resolve itself into discussion groups until the President announces that the debate shall proceed.

35

## **BILL R03**

### **A RULE TO AMEND RULE III – RULES FOR THE CONDUCT OF ELECTIONS ORDERED TO BE MADE BY THE GENERAL SYNOD (NATIONAL REGISTER CHECKS)**

#### **EXPLANATORY MEMORANDUM**

##### **Background**

1. The object of these proposed amendments to Rule III is to provide that a check of the existence and details of any Information in the National Register should be undertaken before the election of persons by the relevant house of the General Synod and the General Synod as members of the Appellate Tribunal and the panel of persons from which members of the Special Tribunal are appointed.
2. It is likely that there would be significant questions raised about the integrity of disciplinary decisions of the Appellate Tribunal and the Special Tribunal if it emerged subsequent to the election of a member of the Appellate Tribunal or a person to the panel from which the members of the Special Tribunal were appointed that there was Information in the National Register relating to the person. The house of the General Synod entitled to vote or the members of the General Synod as the case may be should be aware of the existence and details of any such Information before an appointment.

##### **Clause Notes**

1. Clause 1 inserts a definition of acknowledgement in rule 1.
2. Clause 2 amends rule 3 to specify the timing of any election for the Appellate Tribunal and the panel of persons from which the members of the Special Tribunal are appointed.
3. Clause 3 amends rule 5 to specify information required for a nomination for the Appellate Tribunal and the panel of persons from which the members of the Special Tribunal are appointed.
4. Clause 4 amends rule 6 to specify that the General Secretary shall have access to the National Register and disclose to the Secretaries whether or not there is any Information in the National Register relating to each person so nominated, and if so, what is the

Information. The Secretaries shall cause the lists of all persons so nominated to include the information received from the General Secretary.

*Promoter: Professional Standards Commission*

*Contact: Mr Garth Blake*

## BILL R03

### 5           **A RULE TO AMEND RULE III – RULES FOR THE CONDUCT OF                   ELECTIONS ORDERED TO BE MADE BY THE                   GENERAL SYNOD (NATIONAL REGISTER CHECKS)**

10           The General Synod prescribes as follows:

1.       Insert the following definition in rule 1:

15                       ““Acknowledgment” means the acknowledgment of the  
                            candidate that the General Secretary will disclose whether there  
                            is any, and if so what, Information in the National Register  
                            relating to the candidate to the house of the General Synod  
                            entitled to vote or the members of the General Synod as the  
                            case may be.”

- 20       2.       In rule 3:

          (a)     insert a colon after the word “than”;

25       (b)     insert the following paragraph on a new line thereafter:

          “(a)   the fourth day of the session for the holding of any election  
                    for the Appellate Tribunal and the panel of persons from  
                    which the members of the Special Tribunal are appointed;  
                    and”

30       (c)     place the following words “the third day of the session for the  
                    holding of the said any other elections,” on a new line preceded  
                    by “(b)” and the deletion of the word “said”;

35       (d)     place the following words on a new line.

3.       In rule 5 after paragraph (a) insert the following:

40       “(aa)    In respect of an election for the Appellate Tribunal and the  
                    panel of persons from which the members of the Special  
                    Tribunal are appointed the nomination shall contain the  
                    following information relating to the person being nominated:

- 45                   (i)       their full name;  
                    (ii)       any former name;  
                    (iii)      their date of birth; and

- (iv) the acknowledgment, or if an acknowledgement cannot reasonably be obtained, the certification in writing by one of the nominators that the person has given their acknowledgment.”

5

4. In rule 6 after paragraph (a) insert the following:

“(aa) In respect of nominations for the Appellate Tribunal and the Special Tribunal:

10

- (i) the General Secretary shall have access to the National Register and disclose to the Secretaries whether or not there is any Information in the National Register relating to each person so nominated, and if so, what is the Information;

15

- (ii) the Secretaries shall cause the lists of all persons so nominated to include the information received from the General Secretary.”

20

25

## **BILL R04**

### **A RULE TO AMEND RULE III – RULES FOR THE CONDUCT OF ELECTIONS ORDERED TO BE MADE BY THE GENERAL SYNOD (RULES 17 AND 20)**

#### **EXPLANATORY MEMORANDUM**

1. Rule 15 in Rule III – Elections by General Synod, requires the scrutineers to prepare and certify a list containing the names of the candidates and the number of votes recorded for every candidate.
2. The amendment in clause 1 requires the list referred to in Rule 15 to be displayed in the Synod meeting room during the remainder of the session of the Synod and published with the proceedings of Synod.
3. The reason for this rule change is transparency of the election process and the declaration of results.
4. The amendment in clause 2 is to ensure that where the Standing Committee fills a casual vacancy by way of a contested election, the results are dealt with in a similar way to synod elections. Again, this is a matter of transparency of the election process and it should be reported to the Synod.

*Promoter:*      *Diocese of Sydney*  
*Contact:*      *Mr Robert Tong*



## **BILL R04**

5

### **A RULE TO AMEND RULE III – RULES FOR THE CONDUCT OF ELECTIONS ORDERED TO BE MADE BY THE GENERAL SYNOD (RULES 17 AND 20)**

10

Rule III is amended as follows:

1. At the end of Rule 17 add a further sentence:

15

“The list referred to in Rule 15 shall be displayed in the Synod meeting room during the remainder of the session of the Synod and published with the Proceedings of Synod.”

20

2. At the end of Rule 20 add a further sentence:

25

“Where there are more nominations than vacancies for an election to be filled by the Standing Committee, then the names of all candidates and the number of votes recorded for each candidate shall be reported to the next session of the Synod in the Standing Committee Report.”

## **BILL R05**

### **RULE XXIV – A RULE RELATING TO ADMINISTRATIVE SERVICES OF THE GENERAL SYNOD**

#### **EXPLANATORY MEMORANDUM**

The proposed Rule XXIV is complementary to the Canon proposed in Bill 06, as contemplated by sections 12 and 13 of Bill 06. For background to the Bill see the Explanatory Memorandum for Bill 06. The Rule relates only to General Synod property.

Clause 1 adopts the relevant definitions contained in the proposed canon.

Clause 2 requires all General Synod property to be and remain vested in the Trust Corporation.

Clause 3 requires all contracts entered into by or on behalf of the General Synod to be entered into and administered on behalf of the General Synod by the Corporation.

Clause 4 requires any document under seal to be under the seal of the Corporation.

Clause 5 authorises the Standing Committee to confer relevant authorities, where appropriate, on other persons or bodies.

Both the proposed canon and the proposed rule are declaratory in nature and reflect, to some extent, what has happened in practice in the past.

*Promoter: Church Law Commission*  
*Contact: Mr Ian Walker*

## Definitions

- ## Holding of General Synod Property

- ### Contracts on behalf of General Synod and Standing Committee

- ## Documents under seal

- ## Authorised Persons

- (a) To enter into contracts on behalf of and for the purposes of the General Synod;
- (b) To invest General Synod property consisting of funds and to redeem and transpose such investments;
- (c) To expend monies on behalf of and for the purposes of the General Synod;
- (d) To act on behalf of the General Synod or the Standing Committee in respect of any particular affairs of the General Synod or of any General Synod property.

**BILL 01**  
**BILL 02**

**A BILL FOR THE CONSTITUTION AMENDMENT  
(DIOCESAN COUNCIL) CANON 2010**

**A BILL FOR THE CONSTITUTION AMENDMENT  
(DIOCESAN COUNCIL) REPEAL CANON 2010**

**EXPLANATORY MEMORANDUM**

**Background**

1. The Constitution contains the following definition of “Diocesan council” in section 74(1) –  
“Diocesan council” in a Diocese where there is a synod means the body exercising the powers and functions of the synod on its behalf when it is not in session.
2. The Constitution refers to a “Diocesan council” in sections 30(c), 49, 52(1)(a), 61(4) and 69(1).
3. By Section 4 of the Interpretation Canon 1995 a term defined in sections 74(1) and (2) of the Constitution has, when used in a canon, the same meaning in the canon as it has in the Constitution, except so far as the contrary intention appears. References to a diocesan council occur in several canons including –
  - (a) the Assistant Bishops Canon,
  - (b) the Missionary Dioceses Canon, and
  - (c) the Canon concerning authority in certain matters.
4. The current definition in section 74(1) of the Constitution does not accurately describe the councils of all dioceses since a number of dioceses do not have a body that exercises the powers and functions of the synod on its behalf when it is not in session. It is therefore desirable to amend the definition so that it is capable of covering all diocesan councils.

5. The Constitution Amendment (Diocesan Council) Canon 2007 sought to change the definition from a prescriptive definition to an inclusive definition. However, the proposed change was considered unsatisfactory by at least one metropolitan diocese. Accordingly, it is proposed that the 2007 canon be repealed, and this is the purpose of the Constitution Amendment (Diocesan Council) Repeal Canon 2010.
6. The Constitution Amendment (Diocesan Council) Canon 2010 proposes the insertion of a new definition of “Diocesan council” in subsection 74(1) of the Constitution. The proposed new definition of “Diocesan council” will allow the synod of a diocese to determine its diocesan council where there is no body able to exercise its powers and functions on its behalf when it is not in session.

*Promoter:* Church Law Commission  
*Contact:* Mr Ian Walker

## BILL 01

5

### A BILL FOR THE CONSTITUTION AMENDMENT (DIOCESAN COUNCIL) CANON 2010

10

The General Synod prescribes as follows –

#### **Title**

1. This Canon is the Constitution Amendment (Diocesan Council) Canon 2010.

15

#### **Amendment of Section 74**

2. The definition of “Diocesan council” in subsection 74(1) of the Constitution is deleted and the following definition is inserted instead –

20

““Diocesan council” in a diocese where there is a synod means –

25

- (a) the body exercising powers and functions of the synod on its behalf when it is not in session, or
- (b) where there is no such body, the body declared by the relevant synod to be the diocesan council.”

30

## **BILL 02**

5

### **A BILL FOR THE CONSTITUTION AMENDMENT (DIOCESAN COUNCIL) REPEAL CANON 2010**

10

The General Synod prescribes as follows -

#### **Title**

1. This Canon is the Constitution Amendment (Diocesan Council)  
Repeal Canon 2010.

15

#### **Repeal**

2. The Constitution Amendment (Diocesan Council) Canon 2007 is  
repealed.

20

25

## **BILL 03**

### **A BILL FOR THE LONG SERVICE LEAVE CANON 2010**

#### **EXPLANATORY MEMORANDUM**

1. The purpose of the draft Long Service Leave Canon 2010 is to allow for amendment of:
  - (a) Section 35(2) to lower the minimum entitlement to leave to 1 week and to clarify that a week is intended to be a calendar week rather than a working week;
  - (b) the winding-up provision in Section 48 of the 2007 Canon.
2. The Bill replicates the terms of the 2007 Canon with the exception that it provides for:
  - (a) The two amendments referred to above;
  - (b) Repeal of the 2007 Canon; and
  - (c) Consequential amendments.
3. The draft Long Service Leave Canon 2010 makes no other change to the substantive terms of the 2007 Canon.
4. The proposal for the draft Long Service Leave Canon 2010 has the following history. The Diocese of Sydney indicated that it had reservation concerning Section 48 of the 2007 Canon because it potentially provided for funds which were contributed by Participating Dioceses or a Participating Organisations to be transferred to entities other than those Participating Dioceses or Participating Organisations without their consent.
5. The Long Service Leave Board agreed in principle that on a winding-up the Fund should be returned to the Participating Dioceses and the Participating Organisations which had contributed to it provided that such a process complies with relevant trust law and would not adversely affect the tax exempt status of the Fund. After taking the advice of the Fund's Auditors and Actuary and having received legal advice, the Board was satisfied that the amendment proposed in



Section 48 of the draft Long Service Leave Canon 2010 would satisfy the provisos to its agreement in principle. After consultation, the Board understands that Section 48 in the proposed Canon addresses the reservations held about Section 48 of the 2007 Canon.

6. The proposed amendment to Section 35(2) arose from a suggestion that the Board be given a discretion to reduce the period of 3 weeks on application. The Board takes the view that the process of exercising that discretion creates an unnecessary burden which can be avoided by the amendment proposed. The amendment proposed reflects practise under the 1992 Canon.

*Promoter:*      *Long Service Leave Board*  
*Contact:*      *General Secretary*

## BILL 03

### 5                   **A BILL FOR THE LONG SERVICE LEAVE CANON 2010**

The General Synod prescribes as follows:

#### 10           ***Title***

1.   This canon may be called the “Long Service Leave Canon 2010”.

#### ***Commencement***

- 15           2.   (1)   This Canon comes into operation on the first day of January next following the receipt by the General Secretary of General Synod of notices that it has been assented to by Ordinance of each of the dioceses that are participating dioceses under the Long Service Leave Canon 1992-1995 (the "Former Canon") (in this Canon called “the date of commencement”).

- 20                               (2)   When the General Secretary of General Synod has received the necessary notices of assent for the purpose of sub-section (1), the General Secretary of General Synod shall notify as soon as possible each diocese of the date of commencement.

#### 25           ***The Board***

3.   The Long Service Leave Board established by the Former Canon continues in existence under and subject to this Canon and the Schedule to this Canon.

#### 30           ***The Fund***

4.   The Long Service Leave Fund maintained under the Former Canon continues in existence under and subject to this Canon and is in this Canon called “the Fund”.

#### 35           ***Repeal***

5.   The Former Canon, the Long Service Leave (Amendment) Canon 2001 and the Long Service Leave Canon 2007 are repealed except that (save as provided in this Canon expressly or by necessary implication) all persons things and circumstances appointed or created by or under the Former Canon or existing or continuing under it immediately before the date of commencement under and subject to this Canon and the Schedule continue to have the same status operation and effect as they respectively would have had if the Former Canon had not been so repealed.
- 40
- 45

**Entitlements**

6. The provisions of the Long Service Leave scheme are prescribed in the Schedule.

**Amendments to Schedule**

7. (1) The Standing Committee of General Synod
- (a) may make regulations relating to the general operation of this Canon;
  - (b) may, with the written consent of each Metropolitan, make such regulations amending the Schedule as the Standing Committee considers necessary for the purpose of ensuring that its provisions are consistent with legislation enacted by the Commonwealth, a State or Territory and applicable to the subject matter of this Canon.
- (2) A regulation made under sub-section (1)(b) ceases to have effect on 31 December after the close of the next ordinary session of General Synod.

8. Any amendments to the Schedule shall be advised to the participating dioceses and organisations within 60 days of the agreement in clause 8.

**Financial Protection Canon**

9. The Corporation referred to in the Schedule is declared to be an Organisation to which the Financial Protection Canon 1995 applies.

**Transitional**

10. Except as provided by this Canon expressly or by necessary implication all people things and circumstances appointed or created by or under the Former Canon and the Initial Canon continue to have the same status operation and effect as they respectively would have had if the Former Canon or the Initial Canon had not been repealed.

**SCHEDULE****PART I: INTRODUCTORY****Definitions**

1. (1) Under this Schedule or in any regulation made pursuant to the provisions of this Schedule except in so far as the context or subject matter otherwise requires or indicates-

“Board” means the Long Service Leave Board constituted under Part II of this Schedule;

“Church” means the Anglican Church of Australia;

5 “Commencement Date” means the date of commencement of the Long Service Leave Canon 2010;

10 “Corporation” means the company limited by guarantee incorporated under the law of Victoria under the name Anglican Long Service Leave Fund Limited;

15 “Eligible Charity” means an institution, fund or trust established and maintained for the advancement of religion or other public charitable purposes the income of which is exempt from income tax in Australia ;

“Former Canon” means the Long Service Leave Canon 1992 - 1995;

20 “Fund Year” means a period of 12 months ending on the 31st day of December, or on such other date as the Board may determine, and includes, if the Board determines another date, such period more or less than 12 months as the Board determines;

25 “Initial Canon” means the Long Service Leave Canon 1966-1987;

30 “Member of the Clergy” means –

- (i) a bishop of a diocese;
- (ii) a person in holy orders collated instituted or licensed by the bishop of a diocese to the cure of souls in a parish or to any other appointment in a parish;
- 35
- (iii) a bishop, dean, archdeacon, canon, principal, vice principal or tutor in holy orders of a university or theological college, a principal of a school or a chaplain, or other person in holy orders licensed to a distinct official position in the diocese or holding some other licence of the bishop of the diocese;
- 40
- (iv) a person in holy orders on missionary service;
- 45
- (v) for the purposes of this Schedule, in relation to a diocese the synod of which so resolves, a person licensed by the

bishop of the diocese to exercise the office of deaconess in that diocese; or

- 5 (vi) the Bishop to the Defence Force and Defence Force chaplains in holy orders;

“Notional Stipend” means notional annual stipend within the meaning of section 41;

10 “Ordinary Stipend” in relation to a participant means stipend or salary at the rate paid to the participant immediately preceding the date on which the participant enters or is deemed to enter upon long service leave;

15 “Parish” includes any parochial district, or similar pastoral division constituted by or under ordinance of the synod of a diocese;

20 “Participant” means-

- (i) a member of the clergy in receipt of an ordinary stipend; or
- (ii) a person employed by a participating diocese or participating organisation who:
- 25 (a) with the consent of the Board is nominated as a participant by the participating diocese or participating organisation; or
- 30 (b) is a member of a class of people defined with the consent of the Board as a participant by the participating diocese or participating organisation;

35 for the purposes of this Schedule;

“Participating Diocese” means –

- 40 (i) a diocese of the Church which was a participating diocese for the purposes of the Initial Canon or the Former Canon; and
- (ii) a diocese of the Church admitted under Part V of this Schedule to be a participating diocese;

“Participating Organisation” means –

- 5
- (i) an organisation which was a participating organisation for the purposes of the Initial Canon or the Former Canon; and
  - (ii) an organisation admitted under Part V of this Schedule to be a participating organisation;

10

“Proper Officer” in relation to a participating organisation, means the person particulars of whose office, name and address are furnished to the Board by the participating organisation as those of the proper officer for the time being of the organisation for the purposes of this Schedule;

15

“Qualifying Service” means qualifying service within the meaning of section 34;

20

“Sabbatical Allowance” means an allowance paid to a participant to assist with the cost of taking leave;

“Service” means paid service in a full time or part time capacity as a participant;

25

- (i) in a diocese of the Church or in a diocese which was formerly part of the Church;

30

- (ii) as a missionary being service which the Board with the approval of the Standing Committee prescribes either generally or in a particular case to be or to have been missionary service; or

35

- (iii) as an employee of a participating organization and includes any period during such service of annual holiday leave or of furlough and any period of long service leave under the Initial Canon and/or Former Canon or this Schedule, and “serve” and “serving” have corresponding meanings; and

40

“Standing Committee” means the Standing Committee of General Synod.

45

(2) Except in so far as the context or subject matter otherwise requires or indicates, words importing the singular number include the plural number and vice versa and words importing the masculine gender import the feminine and except for the word “deaconess”, words importing the feminine gender import the masculine.

- (3) Headings of parts of this Schedule are deemed to be part of this Schedule but the headings to sections and any footnotes are not.

5

## PART II: THE BOARD

### ***The Board***

2. For the purposes of this Schedule there is a Board called the Long Service Leave Board.

### ***Membership***

3. (1) A person may not be elected a member of the Board who has been declared by any competent court incapable of managing his or her affairs;
- (2) Subject to section 4, the Board consists of 7 persons namely –
- (a) 1 member of the House of Bishops;
- (b) 2 members of the House of Clergy; and
- (c) 4 members of the House of Laity;
- each of them elected at an Ordinary Session of General Synod by the House of which that person is a member.
- (3) Upon the date of commencement, the persons who held office as members of the Board established by the Former Canon hold office as members of the Board established by this Schedule as if duly elected by the respective House of General Synod of which they are members.
- (4) A member of the Board to whom sub -section (3) applies holds office, subject to this Schedule, until:
- (a) in the case of the member who is a member of the House of Bishops, or of the member who is a member of the House of Clergy and the 2 members who are members of the House of Laity to whom this paragraph applies, the first ordinary session of General Synod next following the date of commencement; or
- (b) in the case of any other of those members - until the second ordinary session of General Synod next following the date of commencement.

- 5 (5) The members of the House of Clergy, and the members of the House of Laity, respectively, shall determine among themselves which member of the House of Clergy and which 2 members of the House of Laity paragraph 3(4)(a) shall apply to and, failing determination within 1 month after the date of commencement, the General Secretary of General Synod shall make the determination by lot.
- 10 (6) Subject to sub-section 3(4):
- (a) a member of the Board elected by the House of Bishops holds office until the ordinary meeting of General Synod next following the election of the member; and
- 15 (b) a member of the Board elected by the House of Clergy or House of Laity holds office until the second ordinary session of General Synod next following the election of the member.
- 20 (7) A member of the Board is eligible for re-election if still a member of a House of General Synod.

***Vacancies***

- 25 4. (1) A member of the Board ceases to hold office if the member –
- (a) resigns;
- (b) dies;
- 30 (c) is declared by any competent court incapable of managing his or her affairs and remains so;
- (d) fails to attend three successive meetings of the Board without leave of the Board; or
- 35 (e) is removed by resolution of the Standing Committee.
- (2) The Standing Committee by resolution may at any time –
- 40 (a) remove a member of the Board from office; or
- (b) fill a vacancy which occurs in an office of member of the Board.
- 45 (3) If a vacancy is filled by the Standing Committee under sub - section (2) the office of a member of the House of Bishops must be filled by a member of the House of Bishops, the office of a member of the House of Clergy must be filled by a member of



the House of Clergy and the office of a member of the House of Laity must be filled by a member of the House of Laity.

- 5 (4) A vacancy or the omission to fill a vacancy does not affect the acts or authority of the Board.
- (5) A person appointed to fill a vacancy holds office for the balance of the term of the person being replaced.

10 **Chair**

5. (1) The Board at its first meeting after each General Synod must elect from among its members a person to occupy the chair.
- 15 (2) In the absence of that person from a meeting of the Board the members present must elect from among themselves some other person to occupy the chair.

**Quorum**

- 20 6. The quorum for a meeting of the Board is 4 members or, if the Board consists of less than 4 members, all the members of the Board.

**Functions**

- 25 7. The functions of the Board are the management and control of the Fund and any other functions which this Canon or the regulations require to be performed, and does not vest in some other body or person.

**Powers**

- 30 8. (1) The Board in performance of the functions vested in it by this Schedule has such powers as –
- (a) are necessarily incidental to or convenient for the due performance of those duties; or
- 35 (b) are expressly vested in the Board by this Schedule.
- (2) The Board may employ as agents and pay –
- 40 (a) any accountant, actuary, banker, barrister, solicitor, estate agent, fund manager, insurance broker, stock broker or other professional person;  
or
- 45 (b) any suitably qualified organisation;
- to perform any function of the Board under the Long Service Leave Canon 2007 and this Schedule.

**Rules and Regulations**

- 5 9. (1) Subject to Part IV of this Schedule the powers of the Board include the power by resolution of the Board to make rules and regulations not inconsistent with this Schedule and necessary or convenient to be made for giving effect to this Schedule including, but without limiting the generality of the foregoing, with respect to –
- 10 (a) the Board's own proceedings records and reports including the procedure for the making of rules and regulations and, without divesting itself of its responsibilities under this Schedule, the appointment of committees of its members and co-option to membership of any such committee;
- 15 (b) the contracting out to a suitably qualified organisation of the day to day administration of the Fund in accordance with the directions of the Board;
- 20 (c) the appointment of all necessary officers, definition of their duties and their remuneration (if any);
- (d) money property investments and audit;
- 25 (e) actuarial investigations consultation approval and advice;
- (f) contributors;
- 30 (g) benefits; and
- (h) any matters in which under this Schedule the Board has a discretion power or duty.
- 35 (2) Upon making a rule or regulation the Board must cause notice of its terms to be given to the Standing Committee, to the Registrar of every participating diocese and to the proper officer of every participating organisation.
- 40 (3) On the first day of the first Ordinary Session of General Synod after the making of a rule or regulation a copy of the rule or regulation must be laid before the Synod and it is lawful for the Synod at that session to disallow it, but disallowance by Synod does not invalidate or affect anything done or contracted to be done under a rule or regulation before its disallowance.
- 45 (4) The Standing Committee may disallow a rule or regulation made by the Board at the first meeting of the Standing Committee after notice is given under sub - section (2) but the disallowance does

not in validate or affect anything done or contracted to be done under a rule or regulation before its disallowance.

5 (5) Upon disallowance by General Synod or the Standing Committee of a rule or regulation made under this Schedule the Standing Committee must cause notice of the disallowance to be given to the Board, to the Registrar of every participating diocese and to the proper officer of every participating organisation.

10 (6) Where a rule or resolution is disallowed, any other rules or resolutions made by the Board have effect as if the disallowed rule or resolution had never been made.

15 ***Actuarial Advice***

10. No power or duty of the Board which entails actuarial knowledge, calculation or judgment may be exercised without obtaining and considering the advice of the Actuary.

20 ***Discretions***

11. Subject only to this Schedule, the Board in exercise of the authorities, powers and discretions vested in it under this Schedule has an absolute discretion and –

25 (a) may exercise all or any of its powers, authorities and discretions from time to time; or

30 (b) (except so far as it may be necessary to give effect to any legal or enforceable rights of any person) may refrain from exercising all or any of its authorities, powers and discretions from time to time or at all.

***Declaration of Interest***

35 12. (1) Every member of the Board who –

(a) is or becomes in any way, whether directly or indirectly, interested in a contract or proposed contract with the Corporation; or

40 (b) holds an office or possesses property whereby whether directly or indirectly duties or interests might be created in conflict with that member's duties as a member of the Board; must as soon as practicable after the relevant facts have come to that member's knowledge declare the facts nature and extent of the interest or conflict at a meeting of the Board.

45

- 5
- (2) That member must not for so long as the interest exists or the conflict is possible vote on any resolution of the Board touching that contract or property or office without the consent of all of the other members of the Board present.
- (3) The requirements of the preceding paragraphs or sub -sections of this section do not apply in any case where the interest consists only of –
- 10
- (a) an interest in a contract or proposed contract with the Corporation if the interest of the member of the Board may properly be regarded as not being a material interest;
- 15
- (b) that member's interest as a participant; or
- (c) being an honorary office holder in an organisation or corporation with which the Corporation contracts.

***Indemnity***

- 20
13. (1) A person is entitled to be indemnified out of the Fund for any personal liability incurred by that person while acting within the authority conferred by this Schedule upon him or her as a member of the Board or officer or other appointee of the Board unless the personal liability is occasioned by that person's own dishonesty or by his or her wilfully and knowingly being a party to an act resulting in the personal liability.
- 25
- (2) In relation to a person mentioned in sub -section 13 (1) the expression "personal liability" means liability for –
- 30
- (a) any of his or her acts, receipts, neglect or default or those of any other Board member, officer or other appointee of the Board;
- 35
- (b) involuntary loss or misapplication of the Fund or of any entitlement payable from the Fund;
- 40
- (c) any loss which results from the insufficiency of any security or from any investment made by the Board in good faith; or
- (d) any loss brought about by a person or organisation employed under section 8 to perform a function of the Board in performing that function.
- 45

**Money**

14. (1) The Board must collect, and pay promptly into a bank, in the name of the Fund, all money paid to the Fund.
- 5 (2) The Fund must be applied by the Board to the purposes of this Schedule but the expenses of the Board and of the management of the Fund are a first charge on the Fund.
- 10 (3) A member of the Board or officer or other person appointed by the Board is entitled to be reimbursed or to have paid or discharged out of the Fund all expenses properly incurred in the performance of the duties of his or her office.

**Financial Statements and Audit**

- 15 15. The Board must –
- (a) keep account of all money received by and disbursed from the Fund and all dealings in connection with that money;
- 20 (b) keep appropriate records and accounts in proper order, and make suitable arrangements for their custody and for custody of documents relating to the investments;
- 25 (c) prepare or have prepared as soon as practicable after the end of each Fund Year financial statements consisting of a balance sheet as at the end of the Fund Year and a statement of income and expenditure for that Fund Year;
- 30 (d) have the financial statements of the Fund audited by an auditor appointed by the Board; and
- (e) require a report to be given to the Board by the auditor in respect of each such audit.

**Reporting**

- 35 16. (1) The Board must once at least in every year have copies of the audited financial statements together with a short report of the Fund's operations for the year provided to –
- 40 (a) the Standing Committee;
- (b) the Bishop and Registrar of every participating diocese; and
- 45 (c) the proper officer of every participating organisation.
- (2) A report of the proceedings of the Board since the previous Ordinary Session of General Synod together with a copy of all

financial statements and reports under sub-section 16(1) made since that Session must be laid before each Ordinary Session of General Synod.

5        ***Limit of Payment***

17. Notwithstanding anything in this Schedule the Board is not bound to make any payment except out of funds held by it for the purposes of this Schedule.

10       ***Insufficient Funds***

18. In the event of the funds held by the Board at any time being insufficient to make all the payments at that time payable by it under this Schedule the Board, subject to any direction of the Standing Committee, must make such payments as in its opinion are fair and equitable in the circumstances.

**PART III: THE CORPORATION**

20       ***Appointment***

19. So far as the Corporations Act 2001 permits, the Board of the Fund must procure at all times that under the Memorandum and Articles of Association of the Corporation –

- 25            (a) there must be not less than 5 members of the Corporation;
- (b) except as provided in paragraph 19(a) the number of members of the Corporation always equals the number of members of the Board of the Fund;
- 30            (c) the members of the Corporation are those persons who from time to time are the members of the Board of the Fund and have consented to be members of the Corporation;
- 35            (d) only persons who are members of the Corporation are eligible to be directors of the Corporation and all members of the Corporation are directors of the Corporation; and
- 40            (e) a person who ceases to be a member of the Board of the Fund ceases to be a member of the Corporation.

***Removal of Members***

20. So far as the Corporations Act 2001 permits, the Board of the Fund must procure at all times that under the Memorandum and Articles of Association of the Corporation a member of the Corporation who –

45

- (a) is continuously absent from the Commonwealth of Australia for more than 3 months without the consent of the remaining members of the Corporation;
- 5 (b) resigns;
- (c) fails to attend 3 successive meetings of the Directors of the Corporation without leave of the Board of the Corporation;
- 10 (d) becomes bankrupt; or
- (e) in the opinion of the remaining members of the Corporation or a majority of them otherwise becomes incapable or unworthy of acting; may be removed from office by the remaining members of the Corporation at a meeting of which 14 days notice has been given to that member wherever resident and to all other members of the Corporation for the time being in the Commonwealth of Australia.
- 15

#### 20 ***Powers of Investment and Borrowing***

- 21. (1) The Corporation acting upon the direction of the Board of the Fund has power –
- (a) to invest the assets of the Fund;
- 25 (b) to vary or realise those investments; and
- (c) to underwrite or sub-underwrite the issue of any investments authorised under this Schedule.
- 30 (2) The Corporation acting upon the direction of the Board of the Fund has power from time to time to borrow, or maintain an existing borrowing of money, whether by way of a secured or unsecured loan with a bank or other institution.
- 35

#### ***Duty of Investment***

- 22. Subject to –
- (a) the direction of the Board of the Fund; or
- 40 (b) the direction (if any) of –
- (i) General Synod; or
- 45 (ii) the Standing Committee;

the Corporation must invest such part or the whole of the Fund in such names in such manner and subject to such conditions as the Board of the Fund in its sole discretion determines.

5

#### **PART IV: THE ACTUARY**

##### ***Appointment***

23. The Board must appoint an Actuary with appropriate qualifications and experience.
- 10
24. The Actuary holds office for a term of 3 years or such lesser period as is specified by the Board but is eligible for re-appointment for a further term.

15

##### ***Actuarial Responsibilities***

25. (1) The Board must cause actuarial investigations of the affairs of the Fund to be made at such intervals not exceeding 3 years as may be decided by the Board.
- 20
- (2) An actuarial report must be given to the Board in relation to each investigation referred to in sub-section 25(1).
- (3) Arising from an actuarial investigation the Board may make, alter or rescind rules or regulations under section 9 relating to
- 25
- benefits payable to participants.
- (4) The Actuary must give advice to the Board upon the request of the Board and may give advice at other times.

30

#### **PART V: CONTRIBUTIONS**

##### ***Additional Participating Dioceses***

26. Where the synod of a diocese which is not then a participating diocese adopts this Schedule, the Board may admit the diocese to be
- 35
- a participating diocese upon such terms and conditions (including terms as to retrospectivity) as the Board with the advice of the Actuary may determine.

40

##### ***Participating Organisation***

27. (1) An organisation which engages 1 or more members of the clergy and agrees to the terms and conditions of participation in the scheme of this Schedule, upon application to and approval by the Board, becomes a participating organisation.
- 45
- (2) A participating organisation may make contributions to the Fund on the account of any participant. Contributions must be of the amount and made at the times which would be appropriate if



that participant were rendering qualifying service in a participating diocese.

***Amount of Contributions***

5        28. Subject to any direction of the General Synod or of the Standing Committee the rate of annual contribution for the purpose of this Schedule –

- 10                    (a) must be set by the Board; and
- (b) applies from the following first day of January.

***Responsibility for Contributions***

15        29. (1) This section applies to a parish institution or organisation (not being a participating organisation) in a participating diocese which is responsible for the payment of the stipend or salary of any participant rendering qualifying service in that diocese, unless the diocese determines to the contrary.

20                    (2) Where this section applies the parish institution or organisation must pay to the proper officer of the diocese in respect of each day during which it is responsible for the payment of the stipend or salary of the participant an amount equal to a 365th part of the annual contribution fixed under section 28.

25

***Payment of Contributions to Diocese***

30        30. Each amount payable to a diocese under section 29 is payable at such times and in such manner as the diocese prescribes.

30        ***Payment of Contributions to the Fund***

31. (1) Each participating diocese or participating organisation must pay a contribution to the Fund within 14 days of the last day of the months of March, June, September and December in each year in respect of each participant receiving stipend or salary as a member of that diocese or organisation who has rendered qualifying service in that diocese or organisation during the whole or any part of the quarter ending on that day. The contribution must be so much of the annual contribution fixed under section 28 of this Schedule as is apportionable to the number of completed days of the member's qualifying service so rendered during the quarter.

35

40

                      (2) In the event of payments not being made within the time limit in sub –section 31(1) interest on the late payment calculated on a daily basis at a rate set by the Board from time to time may be charged at the discretion of the Board.

45

## PART VI ENTITLEMENTS

### **General**

- 5           32. Subject to this scheme every participant serving in a participating diocese or with a participating organisation is entitled to long service leave on his or her ordinary stipend or salary.

### **Amount of Long Service Leave**

- 10           33. (1) The amount of Long Service leave entitlement for a participant is:
- (a) on completion of 10 years of qualifying service a n amount of long service leave calculated:
- 15                   (i) at the rate of 10 weeks for 10 years qualifying service in respect of each year of qualifying service prior to the Commencement Date; and
- 20                   (ii) at the rate of 13 weeks for 10 years qualifying service in respect of each year of qualifying service from and after the Commencement Date.
- (b) subject to sub-clause 35(2), on completion of each subsequent year of qualifying service an amount of long service leave calculated;
- 25                   (i) at the rate of 1 week for each year of qualifying service in respect of each year of qualifying service prior to the Commencement Date; and
- 30                   (ii) at the rate of 1.3 weeks for each year of qualifying service in respect to qualifying service from and after the Commencement Date.
- 35                   (c) on completion of a period of qualifying service fixed by the Board under sub-section (3), a period of leave fixed by the Board under sub –section (3).
- 40           (2) Sub-section (3) applies where in the opinion of the Board –
- (a) the relevant circumstances of a participant are abnormal; and
- 45                   (b) it would be to the disadvantage of the participant for sub-section (3) not to apply.

- 5 (3) Where this sub-section applies the Board may fix –
- (a) (i) a period of qualifying service of less than 10 years where the participant has not completed 10 years qualifying service; or
- 10 (ii) a period of less than 5 years further qualifying service where the participant has completed 10 years qualifying service and part only of any subsequent period of 5 years qualifying service; and
- 15 (b) a period of long service leave to which the participant is entitled upon completion of the period fixed under paragraph 33(3)(a).
- (4) Where long service leave has been taken by a participant the participant's long service leave entitlement is reduced accordingly.
- 20 (5) An entitlement under this section only arises in respect of completed years of qualifying service.

**Qualifying Service**

- 25 34. (1) Qualifying service means –
- (a) service at any time whether before or after Parts II and III of the Initial Canon came into force –
- 30 (i) in a diocese the synod of which resolved before or within 12 months after the coming into force of those Parts that the diocese participate in the scheme of the Initial Canon; and
- 35 (ii) in that part of the Diocese of Carpentaria which became the Diocese of the Northern Territory by virtue of the Diocese of the Northern Territory Formation Canon of 1966;
- 40 (b) service at any time after Parts II and III of the Initial Canon came into force-
- (i) in any other diocese after that diocese has become a participating diocese; or
- 45 (ii) in a participating organisation after that organisation has become a participating organisation.

- (2) Notwithstanding any other provisions of this Schedule, in calculating the length of qualifying service of any participant the following must not be taken into account –
- 5 (a) any excess over 15 years service rendered before Parts II and III of the Initial Canon came into force;
- 10 (b) any service rendered after Parts II and III of the Initial Canon and the Former Canon came into force in respect of which –
- (i) the contributions mentioned in Part V have not been paid; or
- 15 (ii) where that service is missionary service, in respect of which there has not been paid to the Fund a sum which corresponds to the aggregate of the contributions which would have been payable in respect of a like period of service in a participating diocese;
- 20 (c) any period of service in respect of which leave has been taken or payment made under the provisions of the Initial Canon, the Former Canon, this Schedule or of any other long service leave scheme,
- 25 (d) any period of service which is taken into account under any Act of any Parliament award or industrial agreement in calculating an entitlement to leave in the nature of long service leave or payment in lieu of such leave whether the Act award or industrial agreement is made before or after any part of this Schedule came into force. This paragraph does not apply however in calculating the length of qualifying service of any participant who has made application under sub -section 34(3).
- 30
- 35
- (3) (a) When on a particular date a participant has –
- 40 (i) begun to render qualifying service; or
- (ii) resumed rendering qualifying service;
- the participant may make application to the Board to be deemed to have begun or resumed rendering that service on an earlier date.
- 45 (b) The Board, acting upon actuarial advice, may determine a date from which and conditions (including conditions as to

5 payment of contributions in respect of the period between the last mentioned date in paragraph 34(3)(a) and the first mentioned date) subject to which the applicant under paragraph 34(3)(a) is deemed to have begun or resumed rendering qualifying service as the case may be.

(c) In making a determination under paragraph 34(3)(b) the Board –

10 (i) must take into account without further contribution any period of less than 10 years qualifying service which ended less than 5 years before the date of the determination; and

15 (ii) may take into account any period of less than 10 years qualifying service which ended 5 or more years before the date of the determination;

20 in respect of which the participant has not under the Initial Canon, the Former Canon or this Schedule taken leave or received payment.

25 (d) The Board is not required to maintain a record of qualifying service for more than five years after the qualifying service ceases to be rendered by reason only of –

(i) anything in this sub-section; or

30 (ii) the qualifying service having been rendered (wholly or partly) before the commencement of this Schedule.

35 Where any such record has existed, but no longer exists, the Board –

(iii) may still determine a date under paragraph (b); and

40 (iv) if it sees fit may at any time reconstruct the record to its satisfaction and rely on the reconstructed record.

### ***Periods of Leave***

45 35. (1) Leave may be granted and taken in 1 continuous period or if the participant and the diocese or participating organisation so agree in separate periods as follows –

(a) where the amount of the leave exceeds 5 weeks but does not exceed 13 weeks, in 2 separate periods; or

- (b) where the amount of the leave exceeds 13 weeks, in 2 or 3 separate periods.

- 5                   (2) Any period of leave granted pursuant to sub-section (1) must be comprised of complete weeks each comprised of 7 days.

***Annual Holidays Excluded***

- 10           36. Long service leave taken under this Schedule is exclusive of annual holidays but is inclusive of all other days off occurring during the leave.

***When Leave to be Taken***

- 15           37. Where a participant has become entitled to long service leave under this Schedule the leave must be given and the participant must take the leave –

- 20                   (a) where the participant is serving in a participating diocese, as soon as practicable having regard to the needs of the diocese in which the participant is serving except that after an entitlement to leave has accrued the diocese and the participant may agree that the taking of the leave be postponed until an agreed date; or

- 25                   (b) where the participant is not serving in a participating diocese or is serving in a participating organisation, as soon as practicable having regard to the needs of the Church or the participating organisation.

- 30           ***Priority as Between Participants***

- 35           38. Participating dioceses and participating organisations determine the order in which participants entitled to long service leave take that leave but, in determining that order, ordinarily must give priority to those who have rendered the longest qualifying service.

***Notice of Leave***

- 40           39. Every participating diocese or participating organisation must give to each participant, unless that participant otherwise agrees, at least 3 months' notice of the date from which it is proposed that the participant's long service leave shall be given and taken.

**PART VII: NATURE OF SERVICE**

- 45           40. (1) Every participating diocese or participating organisation must advise the Board if a participant begins or concludes part-time service.

- 5                   (2) Where a participating diocese or participating organisation advises the Board in accordance with sub-section 40 (1) they shall advise the Board of the equivalence of that service to full - time service in that participating diocese or participating organisation.
- 10                   (3) Any payment or apportioned payment made by the Board in relation to a participant on part-time service shall be pro-rated in accordance with the advice given by the participating diocese or participating organisation in accordance with sub-section 40 (2).

## PART VIII: PAYMENT

### 15                   ***Notional Stipend***

41. (1) The Standing Committee acting upon the advice of the Board may from time to time determine –
- 20                   (a) a notional annual stipend in respect of all participants expressed as a sum per annum; or
- 25                   (b) a notional annual stipend as so expressed in respect of each of two or more categories of participants determined by the Standing Committee on the advice of the Board; effective from the next first day of January.

### ***Sabbatical Allowance***

42. (1) In respect of each day of long service leave actually taken the rate at which sabbatical allowance is payable is:
- 30                   (a) subject to paragraph 42(1)(b) a rate per day equal to 35.5% of a 365<sup>th</sup> part of the notional stipend pro-rated for the nature of service; or
- 35                   (b) if the Standing Committee, acting on the advice of the Board, fixes another rate per day, the rate so fixed for the time being.

### ***Normal Payment***

- 40                   43. (1) Where a participant whose salary or ordinary stipend is paid by a participating diocese, by a parish, institution or organisation in a participating diocese or by a participating organisation, enters upon a period of long service leave –
- 45                   (a) the participant must be paid his or her salary or ordinary stipend in respect of that period of leave either –

- 5
- (i) in a single payment when the participant enters upon the period of leave; or
- (ii) at the time or times at which the participant's salary or stipend would have been paid if he or she had not taken leave.
- 10
- (b) (i) the Board must pay to the diocese in which the participant was serving or the participating organisation by which the participant was employed immediately before he or she entered upon the leave a sum equal to so much of the notional annual stipend as is apportionable to that period of leave and pro-rated for the nature of service.
- 15
- (ii) where the salary or ordinary stipend of the participant is not paid by the diocese itself the diocese must remit that sum to the parish institution or organisation by which such salary or stipend is paid; and
- 20
- (c) the Board in addition must pay to the diocese or participating organisation a sabbatical allowance in respect of that period of leave and pro-rated for the nature of service and that sabbatical allowance must be paid in full to the participant.
- 25
- (2) Upon a payment being made by the Board under this section the liability of the Fund in respect of the participant for whose benefit it is paid is discharged to the extent of that payment.
- 30

***Payment Direct to Participant***

- 35
44. (1) Where a participant whose ordinary salary or stipend is not paid by a participating diocese, by a parish institution or organisation in a participating diocese or by a participating organisation enters upon a period of long service leave the Board must pay directly to the participant so much of the notional annual stipend as is apportionable to the period of that leave and pro-rated for the nature of service and a corresponding sabbatical allowance.
- 40
- (2) The Board may make the payment under sub -section 44(1) conditional upon the participant entering into such an agreement with it relating to the acceptance by the participant of other payments in the nature of stipend salary or wages or the like as the Board deems proper.
- 45



***Payment in lieu on Death***

45. (1) When the qualifying service of a participant terminates by reason of the participant's death then an amount for each completed year of service is to be paid, equal to 1 week for each year of qualifying service performed prior to the Commencement Date and 1.3 weeks for each year of qualifying service performed on or after the Commencement Date of the notional stipend current at the date of the participant's death together with a proportionate payment for any incomplete year of qualifying service rendered.
- (2) The amount payable under sub-section 45(1) –
- (a) is not to include the sabbatical allowance; and
- (b) is payable to such person or persons as the Board determines.

***Payment in Lieu on Resignation or Retirement***

46. (1) When the qualifying service of a participant terminates other than by reason of the participant's death, and –
- (a) the participant has completed at least 5 years qualifying service; and
- (b) sub-section 33(3) does not apply;
- then the participant is to be paid an amount equal to one week for each year of qualifying service performed prior to the Commencement Date and 1.3 weeks for each year of qualifying service on or after the Commencement Date of the then current notional stipend and pro-rated for the nature of service together with a proportionate payment for any incomplete year of qualifying service rendered and pro-rated for the nature of service.
- (2) The amount payable under sub-section 46(1) is not to include a sabbatical allowance.

***Payment to Another Fund***

47. (1) Where the participating diocese or organisation which contributes in respect of a participant gives notice to the Board under this section then at the expiration of three months from the date of giving notice the Board is empowered to exercise its discretion under sub-section 47(2) as if the participant had resigned at the expiration of the period of three months.
- (2) Where a participant resigns and the Board satisfies itself –

- 5 (a) that the participant intends to continue or resume employment under conditions of employment where contributions are to be made to another fund or organisation whose constitution and rules for the payment of benefits are similar to those of the Fund ("the other Fund"); and
- 10 (b) that employment is, or will become, available to the participant to take up;
- 15 the Board in its discretion, exercisable at any time before payment is made under this Part, may decide that this section applies, whether or not the participant has completed 10 years of qualifying service.
- (3) If the Board decides that this section applies section 46 does not.
- 20 (4) Where this section applies and –
- (a) the participant has completed 10 years or more of qualifying service; or
- 25 (b) the participant had not completed 10 years of qualifying service but has completed a period of less than 10 years qualifying service fixed under sub-section 33 (3);
- 30 the Board must pay the amount payable under this section either to the other fund or to the participant, as the Board sees fit.
- 35 (5) Where this section applies but the participant has not completed 10 years or more of qualifying service or a period of less than 10 years qualifying service fixed under sub-section 33 (3), the Board at its sole discretion may fix the participant's completed service as qualifying service under sub -section 33 (3), and must pay the amount payable under this section to the other fund.
- 40 (6) The amount payable under this section is an amount equal to one week for each year of qualifying service performed prior to the Commencement Date and 1.3 weeks for each year of qualifying service on or after the Commencement D ate of the then current notional stipend and pro -rated for the nature of service together with a proportionate payment for any
- 45 incomplete year of qualifying service rendered and pro-rated for the nature of service.

- (7) The Board may at any time before payment is made under this section revoke its decision, in which case this section no longer applies and section 46 once again applies.

5

## PART IX: GENERAL

### ***Winding Up***

48. (1) In this section –

10

“End Date” is the date on which the Fund is wound up or dissolved.

15

“Liability of the Fund for long service leave benefits” means the liability of the Fund for long service leave benefits payable under the Canon determined in accordance with applicable Australian Accounting Standards or similar standards applicable from time to time.

20

“Successor Fund” means an entity, fund, authority or institution of similar purpose to the Fund and whose constitution or trust deed and rules for the payment of benefits are as nearly as possible similar to those of the Fund, and which is an Eligible Charity.

25

“Surplus Assets” means, in respect of the Fund as at the End Date, the assets, property or money of the Fund, remaining after satisfaction of, or provision for, the debts and liabilities of the Fund, other than the liability of the Fund for long service leave benefits.

30

(2) If –

- (a) the Fund is wound up or dissolved for any reason, and
- (b) on the End Date there are Surplus Assets of the Fund,

35

the Surplus Assets are to be paid or transferred in accordance with this section.

(3) The Surplus Assets are to be paid or transferred in accordance with the following provisions –

40

(a) Each Participating Diocese and Participating Organisation as at the End Date is to nominate to the Board a Successor Fund for that Participating Diocese or Participating Organisation.

45

(b) If a Participating Diocese or Participating Organisation does not nominate a Successor Fund to the Board within 6

months after request made by the Board, the Successor Fund for that Participating Diocese or Participating Organisation will be determined by the Board with the approval of the Standing Committee.

5

- (c) The Board will pay from the Surplus Assets to the Successor Fund nominated by a Participating Diocese or Participating Organisation an amount ("A") calculated in accordance with the following formula –

10

$$A = B/C \times D$$

where –

15

B is the liability of the Fund for long service leave benefits, which relate to Participants for whom that Participating Diocese or Participating Organisation made or was liable to make contributions to the Fund under section 31(1) for or in respect of the last complete quarter ending on or before the End Date.

20

C is the liability of the Fund for long service leave benefits, which relate to all Participants for whom Participating Dioceses or Organisations made or were liable to make contributions to the Fund under section 31(1) for or in respect of the last complete quarter ending on or before the End Date.

25

D is the total value of the Surplus Assets.

30

- (d) If on the End Date a Participating Diocese or Participating Organisation has not paid any contribution for which it is liable under section 31(1), A must be reduced by the amount of any such unpaid contribution.

35

- (4) Each Successor Fund must assume the liability of the Fund for long service leave benefits in respect of the Participants for whom the relevant Participating Diocese or Participating Organisation made or was liable to make contributions to the Fund under section 31(1) for or in respect of the last complete quarter ending on or before the End Date.

40

We certify that this bill was passed by the General Synod of The Anglican Church of Australia this        day of September 2010.

45

50

(Name)

(Name)

5

Secretaries of Synod

## **BILL 04**

### **A BILL FOR THE CONSTITUTION AMENDMENT (APPELLATE TRIBUNAL PART HEARD MATTERS) CANON 2010**

#### **EXPLANATORY MEMORANDUM**

This Canon provides for a Constitutional amendment to cover a present perceived gap in our Constitution where matters before the Appellate Tribunal which have not completed a hearing before that Tribunal are affected by the retirement of a member of the Appellate Tribunal. A further Explanatory Memorandum will follow.

*Promoter:*      *Church Law Commission*  
*Contact:*      *Mr Ian Walker*

## BILL 04

### 5                    **A BILL FOR THE CONSTITUTION AMENDMENT (APPELLATE    TRIBUNAL PART HEARD MATTERS) CANON 2010**

10            The General Synod prescribes:

1.        Insert after Section 57(1) of the Constitution:

15                    (1A) Despite the restriction in Section 57(1) on the number of  
   members of the Appellate Tribunal, the General Synod may by  
   canon provide for –

20                            (a) the continuation in office of a member of the tribunal  
   whose office is to be vacated, but who is participating in  
   the disposition of an appeal, question or matter made or  
   referred to the tribunal that will not be concluded by the  
   date on which the member's office is to be vacated, for the  
   purposes only of participating in and concluding that  
   unfinished appeal, question or matter; and

25                            (b) the appointment of a person to fill the office of such  
   member –

30                            and the person so appointed must not participate in that  
   unfinished appeal, question or matter, but is the member of the  
   tribunal for all other appeals, questions or matters.

35

## **BILL 05**

### **A BILL FOR THE APPELLATE TRIBUNAL AMENDMENT 1981 (PART HEARD MATTERS) CANON 2010**

#### **EXPLANATORY MEMORANDUM**

This Canon amends the Appellate Tribunal Canon to provide a permanent solution to the problem of part heard matters before the Appellate Tribunal affected by retirement of a member of the Tribunal. The Canon can only come into effect after the Constitutional amendment proposed in Bill 04. A further Explanatory Memorandum will follow.

*Promoter:*      *Church Law Commission*  
*Contact:*      *Mr Ian Walker*



## BILL 05

### 5                    **A BILL FOR THE APPELLATE TRIBUNAL AMENDMENT 1981 (PART HEARD MATTERS) CANON 2010**

10            The General Synod prescribes:

#### **Commencement**

- 15            1.    This Canon comes into force on the day following the date on which  
the Constitution Amendment (Appellate Tribunal – Part Heard  
Matters) Canon 2010 commences.

#### **Amendment of the Appellate Tribunal Canon 1981**

- 20            2.    The Appellate Tribunal Canon 1981 is amended by adding after  
section 4A—

4AB. (1)    Despite sections 4 and 4A, if—

- 25                            (a)    the seat of a member (the retiring member) of the  
Appellate Tribunal is to be vacated under section 4  
because the retiring member—
- 30    (i)    attains the age of 69 years before the  
commencement of the next ordinary session of  
Synod; or
- (ii)    being a bishop, ceases to be a diocesan  
bishop when section 6 does not apply; and
- 35                            (b)    that retiring member is not otherwise disqualified  
from membership of the Appellate Tribunal; and
- 40                            (c)    the retiring member is participating in the disposition  
of an appeal, question or matter (to an extent greater  
than participating in directions hearings or other  
procedural steps) made or referred to the Appellate  
Tribunal (the continuing matter); and
- 45                            (d)    the continuing matter has not been finally concluded  
before the seat of the retiring member is to be  
vacated—

the retiring member remains a member of the Appellate Tribunal for the purposes only of participating in and concluding the continuing matter.

5

- (2) Despite sub-section (1), if a retiring member remains a member of the Appellate Tribunal for the purposes of participating in and concluding a continuing matter, the seat of the retiring member is deemed to be vacated on the date provided under section 4 for the purpose of filling the retiring member's seat as a member of the Appellate Tribunal.

10

15

## **BILL 06**

### **A BILL FOR THE TRUST CORPORATION CANON 2010**

#### **EXPLANATORY MEMORANDUM**

The Trust Corporation of General Synod is constituted under the New South Wales Act of Parliament which gave effect to the Constitution in 1962. The relevant provisions governing the Trust Corporation are contained in section 64 of the Constitution.

For some time there has been doubt as to the precise role of the Corporate Trustees, who constitute the Trust Corporation, particularly with respect to the property of the General Synod.

The method of appointment of the Trustees and some aspect of their role is contained in the Corporate Trustees Canon 1962.

Section 64 of the Constitution is not precise as to the Trustees' role. They (i.e. the Corporation) may be appointed Trustees of any church trust property, with certain restrictions and provisos where that property is under the control of the synod of a diocese or of any "society, council, board, agency or authority". It is otherwise silent about how the General Synod property is to be held and dealt with. The Corporate Trustees Canon 1962 does not assist.

Neither the General Synod nor the Standing Committee is an incorporated body. They cannot hold real or personal property in their own names. They cannot, in those names, enter into binding contracts. If they do, and when this is done with the authority of the Standing Committee, it is probably the members of the Standing Committee at the relevant time who are liable for any breach of such a contract.

The Trust Corporation has, in the past, had vested in it some real property for the purposes of the General Synod. Investments have been made in the name of the Trust Corporation, being the only body corporate available to hold such investments, but there has been a lack of clarity as to the role of the Corporate Trustees in the obtaining and disposing of such investments – whether they should be exercising their discretion as trustees in making decisions as to such transactions or whether they and the Corporation should be merely acting as bare trustees, with such decisions being made

by the Standing Committee or persons duly authorised to make such decisions by the General Synod or the Standing Committee.

This Bill seeks to clarify that, but only in respect of General Synod property as defined. It recognises that the Trust Corporate and the Corporate Trustees may have different roles in respect of any property which may be held on behalf of the synod of a diocese or on behalf of any society, council, board, agency or authority. The substance of provisions applicable to such property remains unchanged and is contained in Part 5 of the Bill. The Bill does not seek to change anything in respect of any property which may be so held.

The effect of the Bill is to require (section 12) that the Trust Corporation hold and administer all General Synod property (including funds) in accordance with and subject to the provisions of any Rule of General Synod. It also provides (section 13) that any contract entered into by the Corporation on behalf of the General Synod is to be administered in accordance with the provisions of any Rule of the General Synod.

It further provides (section 14) that the General Synod or Standing Committee may authorise a person, persons, or body (e.g. the Executive Committee, Finance Committee or an individual) to enter into a contract on behalf of the Corporation and to sign cheques and authorise the transfer of funds on its behalf.

Property and contracts are to be administered subject to the direction of the General Synod or Standing Committee (section 15).

As is usual in such circumstances, the Trustees are to be indemnified out of the General Synod property in respect of any liability arising out of the exercise or purported exercise of any power or authority under Part 4 of the Canon.

All the provisions of Part 4 of the proposed Canon are subject to any express trusts that may apply to any particular property held for the purposes of the General Synod.

Part 1 of the Bill provides for the title of the proposed Canon, the definition of relevant terms (including General Synod property) and the repeal of the present Corporate Trustees Canon 1962.

Part 2 provides for the number, appointment and tenure of office of the Corporate Trustees and for the filling of vacancies.

Part 3 provides for the regulation of the affairs of the Corporate Trustees. In respect of General Synod property, section 11(2) would only be applicable where the relevant delegations or directions have not been made under sections 14 or 15.

Part 4 provides for the holding and administration of the property and affairs of the General Synod (see above).

Part 5 continues the effect of the existing provisions relating to any other trust property held by the Corporate Trustees.

Part 6 provides for the making of a report by the Trustees to the General Synod.

The proposed Rule XXIV is complementary to the proposed canon, as contemplated by sections 12 and 13 of the Bill. The Rule relates only to General Synod property.

Both the proposed Canon and Rule are declaratory in nature and reflect, to some extent, what has happened in practice in the past.

*Promoter:*        *Church Law Commission*

*Contact:*        *Mr Ian Walker*

## **BILL 06**

### **5 A BILL FOR THE TRUST CORPORATION CANON 2010**

The General Synod prescribes as follows:

#### **10 PART 1 - PRELIMINARY**

##### **Title**

1. This Canon may be cited as the "Trust Corporation Canon 2010".

##### **Definitions**

2. In this Canon, unless the context otherwise requires –

15 "the Corporation" means The Anglican Church of Australia Trust Corporation constituted under section 64 of the Constitution;

"document" includes any contract, authority, bill of exchange and transfer of funds by whatever means;

20 "General Synod property" means any real or personal property or any estate or interest therein under the control of or held for the purposes of the General Synod;

"Trustees" means the persons constituting the Corporation and referred to in section 64 of the Constitution as the corporate trustees.

##### **25 Repeal of Corporate Trustees Canon**

3. (1) The Corporate Trustees Canon 1962 is repealed.  
(2) Notwithstanding the repeal effected by subsection (1), the Trustees holding office under the repealed Canon shall continue in office under and subject to the provisions of this Canon.

30

#### **PART 2 – APPOINTMENT AND TENURE OF OFFICE OF TRUSTEES**

##### **Number of Trustees**

4. The number of Trustees shall be five, of whom three shall form a quorum.

35

### **Appointment**

5. The Trustees shall be appointed by the Standing Committee and shall hold office for such period and on such terms as the Standing Committee shall determine.

### **Tenure of Office**

6. A Trustee shall hold office until he or she –
  - (a) resigns, or
  - (b) dies, or
  - 10 (c) is declared by any competent court incapable of managing his or her affairs, or
  - (d) ceases to reside permanently in Australia, or
  - (e) is retired by a resolution of General Synod or of the Standing Committee.

### **Vacancies**

7. (1) A vacancy in the office of Trustee shall be filled by the Standing Committee.
- (2) The Trustees may act notwithstanding any vacancy in the office of Trustee.

20

## **PART 3 – REGULATION OF AFFAIRS**

### **Chair**

8. The Chair of the Trustees shall be appointed by the Standing Committee for such period as the Standing Committee shall determine.

25

### **Meetings**

9. (1) The Trustees may hold meetings as they see fit and may make rules for the conduct of their meetings.
- (2) The Chair shall have a deliberative but not a casting vote.
- 30 (3) A telephone or video conference between the Trustees shall be taken to be a meeting of the Trustees at which the participating Trustees are present.

30

### **Resolutions**

10. (1) A resolution signed by all Trustees shall be as valid and effective as a resolution made at a meeting of the Trustees.

35

- 5                   (2) A proposed resolution of the Trustees becomes a valid decision of the Trustees despite the fact that it is not voted on at a meeting of the Trustees if:
- (a) Notice of the proposed resolution is given to all members in accordance with procedures determined by the Trustees; and
- 10                  (b) At least three quarters of the Trustees in office express their concurrence in the proposed resolution by letter, email, facsimile transmission or other written communication setting out the terms of the resolution.

#### **Execution of Documents**

11. (1) The seal of the Corporation may be attached to any document pursuant to a resolution by the Trustees and countersigned by two Trustees.
- 15               (2) Subject to the provisions of this Canon, a document not required to be under seal may be executed by the Corporation by two Trustees in accordance with a resolution of the Trustees.

### **PART 4 – PROPERTY AND AFFAIRS OF THE GENERAL SYNOD**

#### **20       General Synod Property**

12. Subject to any particular trusts affecting General Synod property, the Corporation shall hold and administer all General Synod property in accordance with and subject to the provisions of any Rule of the General Synod.

#### **25       General Synod Contracts**

13. Any contract entered into by the Corporation on behalf of the General Synod shall be administered in accordance with the provisions of any Rule of the General Synod.

#### **Authority of Standing Committee**

- 30               14. (1) Unless it has good and substantial reasons for refusing to do so the Corporation is to act in accordance with any policy as directed by the Standing Committee from time to time and to carry out all determinations of the Standing Committee or its delegate.
- 35               (2) If the Corporation refuses to act in accordance with such policy or to carry out a determination of the Standing Committee or its



delegate it must forthwith notify in writing its refusal and its reasons for refusal to the Standing Committee.

### **Delegation**

- 5           15. (1) Any person, persons or body authorised by the General Synod  
or the Standing Committee to enter into a contract on behalf of  
the General Synod or Standing Committee or otherwise  
authorised to act on behalf of the General Synod or the  
10           Standing Committee in respect of its property or affairs is  
authorised to enter into such contract and to act on behalf of the  
Corporation in respect of such matter and to execute any  
documents on behalf of the Corporation to give effect to the  
authority given by the General Synod or the Standing  
Committee as the case may be.
- 15           (2) The person or persons authorised to sign any bill of exchange or  
to effect the transfer of funds of the Corporation shall be  
determined from time to time by the Standing Committee subject  
to the approval of the trustees, which approval shall not be  
unreasonably withheld.

### **Management**

- 20           16. Subject to any trusts affecting General Synod property, General  
Synod property shall be held and any contract entered into by the  
Corporation on behalf of the General Synod or Standing Committee  
shall be administered subject to the direction of the General Synod or  
the Standing Committee.

### **Indemnity**

- 25           17. The Corporation and the Trustees, acting honestly and reasonably  
pursuant to this Part, are indemnified out of the General Synod  
property in respect of any liability arising out of or in the course of the  
non-exercise, the exercise or purported exercise of any power or  
30           authority under this Part.

## **PART 5 – OTHER TRUST PROPERTY**

### **Consent under section 64(4) of the Constitution**

- 35           18. (1) The consent of the synod of a diocese or the consent of a  
society, council, board, agency or authority required under  
subsection (4) of section 64 of the Constitution shall be given by  
ordinance or resolution of such synod, council, or board or by  
the committee of management of such society, agency or  
40           authority.

- (2) A copy of such ordinance or resolution shall be lodged with the Corporation certified under the hand of the President of such synod or Chairman of the meeting of the council, board or committee as the case may be.

5       **Holding of Property**

19. Where the Corporation holds property in respect of which such consent has been given it shall be held subject to the written direction of such synod, society, council, board, agency or authority given pursuant to its constitution and subject to any trust affecting such property.
- 10

**Indemnity**

20. The Corporation and the Trustees, acting honestly and reasonably, are indemnified out of the funds held by them on trust under this Part in respect of any liability arising out of or in the course of the non-exercise, the exercise or purported exercise of their duties and activities under this Part.
- 15

**PART 6 - GENERAL**

**Report**

- 20       21. The Trustees shall present a report of their administration to the Standing Committee at such intervals as the Standing Committee shall from time to time determine.

## **BILL 07**

### **A BILL FOR THE CONSTITUTION AMENDMENT (SECTION 30) CANON 2010**

#### **EXPLANATORY MEMORANDUM**

Section 30 of the Constitution covers the situation where a Canon of the General Synod does not provide that it affects the good government of a diocese yet a diocese reckons that it is so affected.

The procedure laid down is that the diocese will protest by stating its opinion that the canon does so apply. The General Synod Standing Committee then considers the opinion and, if it agrees with it, the canon does not affect that diocese until adopted by that diocese. If the General Synod Standing Committee does not inform the Primate of such agreement, the matter goes to the Appellate Tribunal for decision.

Recently a diocese put this procedure into motion in respect of 3 canons of the 2007 General Synod. Its Standing Committee formed the opinion that each of them affected the good government of that diocese. No reasons were given as to why this opinion was held. The General Synod Standing Committee did not agree with the opinion: the Primate was thus obliged to send the matter for determination by the Appellate Tribunal.

The Diocese concerned decided not to assist the Appellate Tribunal with its reasons or any submissions. The General Synod Standing Committee spent funds in formulating submissions to the Tribunal which produced its opinion that it could see no grounds for supporting the diocese's opinion.

This whole exercise appears to be a waste of time and money.

In an endeavour to prevent this reoccurring, this canon would require the diocese forming an opinion to state the reasons for its opinion and if it did not its mere forming an opinion would not be effective. The provision of reasons would allow the General Synod Standing Committee to focus on those reasons when advising the Primate and, if the matter went to the Appellate Tribunal, assist that Tribunal.

*Promoter:*      *Church Law Commission*  
*Contact:*      *Mr Ian Walker*

## **BILL 07**

5

### **A BILL FOR THE CONSTITUTION AMENDMENT (SECTION 30) CANON 2010**

10

A canon to amend Section 30 of the Constitution.

The General Synod prescribes as follows:-

15

1. This Canon is the Constitution Amendment (Section 30) Canon, 2010.

2. Section 30 of the Constitution is amended by adding immediately after the word "thereafter" in proviso (c) the words "of its opinion and its reasons therefor".

20

3. Section 30 of the Constitution is further amended by adding immediately after the word "opinion" where first occurring in proviso (c)(ii) the words "as aforesaid".

25

## **BILL 08**

### **A BILL FOR THE NATIONAL REGISTER CANON 2007 AMENDMENT CANON 2010**

#### **EXPLANATORY MEMORANDUM**

##### **Background**

1. The object of this proposed Canon is to provide for some amendments to the National Register Canon 2007.
2. There have been instances where Historical Information and Current Information placed on the Register have been incomplete. The existing practice is to include a caution in the National Register for these circumstances. The amendment to Section 8 requires the entry of a caution in the National Register for so long as these circumstances exist.
3. Exclusion of a Church body or a category of church workers from the operation of this Canon is dealt with by a new section 8A rather than through the definitions of “Church body” and “church worker”. This amendment is to ensure that the power to exclude a Church body or a category of church workers from the operation of this Canon is effective. There are consequential amendments to these definitions. Exclusion will only be possible where the General Synod or the Standing Committee is satisfied that there are minimum safe ministry policies which apply to the Church body other than a parish or category of church workers. Existing exclusions will continue in force. The definition of “Church body” has also been amended to include a body corporate, organisation or association that exercises ministry within, or on behalf of, or in the name of, the Church formed by or by the authority of the synod of a province.
4. Bullying is added as a new category of child abuse in recognition of the adverse impact it can have on the safety and welfare of children. The definition is based on the definition of bullying in section 55A of the *Occupational Health and Safety Act 1986* (SA).
5. An adverse admission by, a notifiable charge against, and an adverse finding against, a member of the clergy and lay person arising out of sexual misconduct or child abuse are added as new categories of

Information to be included in the National Register. This is necessary because a member of the clergy or a lay person may make an admission of conduct constituting sexual misconduct or child abuse, or be charged with such conduct, or be found by a court or tribunal to have engaged in such conduct, in circumstances where there is no complaint or disciplinary action. Access to this Information for certain authorised persons will not be available until 1 December 2010 or such further time as the General Secretary allows, to enable the Directors of Professional Standards to enter this Information in the National Register.

6. Currently the Directors of Professional Standards have no obligation to notify the General Secretary of Excluded Information which arises when a notifiable complaint or a notifiable charge is exhausted. An obligation has been created by amending the definition of “Current Information”.
7. No declaration under s 30(b) of the Constitution has been included in the Bill because, as is clear from the reasoning of the Appellate Tribunal in its Determination dated 9 March 2010 on the reference which included the National Register Canon 2007, its provisions do not affect the order and good government of the Church within any diocese.

### **Clause Notes**

Clause 1 states the title of the Bill and that the National Register Canon 2007 is referred to as the principal Canon.

Clause 2 provides for the inclusion in section 5 of an adverse admission, a notifiable charge, and an adverse finding as a new category of Information about clergy in the National Register.

Clause 3 provides that the register of lay persons established by section 6 is subject to the Canon and for the inclusion in section 6 of an adverse admission, a notifiable charge, and an adverse finding as a new category of Information about lay persons in the National Register.

Clause 4 renumbers the existing section 8 as subsection (1) and inserts subsections (2) to (5) which provides Director of Professional Standards shall advise the General Secretary if one or both of Historical Information and Current Information have not been notified, and once they have been notified. The General Secretary shall enter a caution in the National Register for so long as one or both of Historical Information and Current Information is incomplete.

Clause 5 inserts a new section 8A which:

- (a) provides for the establishment of exclusion criteria;
- (b) authorises the General Synod or the Standing Committee to exclude a Church body other than a parish or a category of church workers from the operation of the Canon if it is satisfied that the Church body or the category of church workers meets the exclusion criteria;
- (c) specifies that clergy cannot be excluded from the operation of the Canon;
- (d) authorises the General Synod or the Standing Committee to revoke the exclusion if it is satisfied that the Church body or the category of church workers no longer meets the exclusion criteria;
- (e) requires the General Secretary to publish a list of all Church bodies and categories of church workers excluded from the operation of the Canon.

Clause 6 renumbers the existing section 11 as subsection (1) and inserts subsection (2) which provides that access to Information relating to an adverse admission by, a notifiable charge against, and an adverse finding against, clergy and lay persons in the National Register for certain authorised persons is not available until 1 December 2010 or such further time as the General Secretary allows to enable the Directors of Professional Standards to enter this Information in the National Register.

Clause 7 inserts a new section 20 which provides that existing exclusions of Church bodies and categories of church workers excluded from the operation of this Canon shall be deemed to have been made under the new exclusion provisions.

Clause 8 provides for an adverse admission, an adverse charge, and an adverse finding to be added as new categories of Information about clergy in the First Schedule.

Clause 9 provides for an adverse admission, an adverse charge, and an adverse finding to be added as new categories of Information about lay persons in the Second Schedule.

Clause 10 provides for the amendment of the Third Schedule:

- (a) by inserting definitions of adverse admission, adverse finding, and bullying;
- (b) by inserting a definition of caution to indicate that certain Information is incomplete;
- (c) by amending the definition of “child abuse” to include bullying;
- (d) by amending the definition of “Church body”:

- (i) to include a body corporate, organisation or association that exercises ministry within, or on behalf of, or in the name of, the Church formed by or by the authority of the synod of a province;
  - (ii) to omit the power to exclude a Church body from the operation of the Canon;
- (e) by amending the definition of “church worker” to omit the power to exclude a church worker from the operation of the Canon;
- (f) by amending the definition of “Current Information” to include Exempt Information where a notifiable complaint has been notified to the General Secretary for entry in the National Register;
- (g) by amending the definition of “Exempt Information” and “exhausted” to take account of a notifiable charge;
- (h) by inserting a definition of notifiable charge.

*Promoter: Professional Standards Commission*  
*Contact: Mr Garth Blake*



# BILL 08

5                   **A BILL FOR THE NATIONAL REGISTER CANON 2007**  
                       **AMENDMENT CANON 2010**

The General Synod prescribes as follows:

# Title

1. (1) This Canon may be cited as the National Register Canon 2007 (Amendment) Canon 2010.
- (2) The National Register Canon 2007 is hereinafter referred to as “the principal Canon”.

## Amendment of section 5

2. Section 5(1) of the principal Canon is amended by:
  - (a) in paragraph (a) inserting the words “or a notifiable charge” after the words “complaint”;
  - (b) inserting the following paragraph after paragraph (b):
    - “(c) who have made an admission of, or been found by to have engaged in, conduct constituting sexual misconduct or child abuse;”

and renumbering the remaining paragraphs.

## Amendment of section 6

3. Section 6(1) of the principal Canon is amended by:
  - (a) deleting the word “The” and substituting the words “Subject to this Canon, the”;
  - (b) in paragraph (a) inserting the words “or a notifiable charge” after the words “complaint”;
  - (c) inserting the following paragraph after paragraph (a):

“(b) who have made an admission of, or been found by to have engaged in, conduct constituting sexual misconduct or child abuse;”

and renumbering the remaining paragraphs.

**Amendment of section 8**

4. Section 8 of the principal Canon is amended by:

- 5 (a) renumbering the existing section as subsection (1);
- (b) inserting the following subsections after subsection (1):
  - 10 “(2) A Director of Professional Standards shall advise the General Secretary if one or both of Historical Information and Current Information have not been notified in accordance with subsection (1) as soon as practicable after becoming aware of the existence of the Historical Information or the Current Information which has not been notified.
  - 15 (3) The General Secretary, on receipt of advice under subsection (2), shall as soon as practicable thereafter enter a caution in the National Register.
  - (4) A Director of Professional Standards who has given the General Secretary advice in accordance with subsection (2) shall advise the General Secretary that one or both of Historical Information and Current Information have been notified in accordance with subsection (1) as soon as practicable after the notification has occurred.
  - 20 (5) The General Secretary, on receipt of advice under subsection (4), shall as soon as practicable thereafter remove the caution from the National Register.”
  - 25

**Addition of section 8A**

5. The principal Canon is amended by the insertion of the following section after section 8:

- 30 ***“Exclusion from operation of the canon***
- 8A(1) The General Synod, or the Standing Committee, may establish exclusion criteria, and shall publish any such criteria on the General Synod website.
- 35 (2) If exclusion criteria are established they must include:
  - (a) a system of screening for sexual misconduct in relation to adults and child abuse;
  - (b) a code of conduct; and
  - 40 (c) a system for making and dealing with complaints of sexual misconduct in relation to adults and child abuse.
- (3) The General Synod, or Standing Committee by a two-thirds majority, on application by a province or diocese may exclude from the operation of this Canon for such period as it determines:
- 45
  - (a) a Church body other than a parish; and
  - (b) a category of church workers;

if it is satisfied that the Church body or the category of church workers meets the exclusion criteria.

- 5 (4) The exclusion of a Church body from the operation of this Canon shall not apply to any clergy employed by or exercising ministry within the Church body unless otherwise specified in the resolution under subsection (2).
- 10 (5) The General Synod, or the Standing Committee by a two-thirds majority, may in respect of an exclusion referred to in subsection (2) revoke the exclusion if it satisfied that the Church body or the category of church workers no longer meets the exclusion criteria.
- 15 (6) The General Secretary shall publish on the website of the General Synod a list of all Church bodies and categories of church workers excluded from the operation of this Canon and the date on which the exclusion took effect and if applicable the period during which the exclusion had effect.

**Amendment of section 11**

- 20 6. Section 11 of the principal Canon is amended by:
  - (a) renumbering the existing section as subsection (1);
  - (b) inserting the following section after subsection (1):
- 25 “(2) Access to the Information referred to in sections 5(1)(c) and 6(1)(b) of this Canon shall not be available to the persons specified in paragraphs (a), (b), (c) and (f) of subsection (1) until 1 December 2010 or such further time as the General Secretary allows.”
- 30

**Addition of section 20**

- 35 7. The principal Canon is amended by the insertion of the following section after section 19:
  - “**Transitional**
  - 20(1) Any Church body or a category of church workers excluded from the operation of this Canon shall be deemed to have been excluded under section 8A(2).
  - 40 (2) The General Synod, or the Standing Committee by a two-thirds majority, may in respect of an exclusion referred to in subsection (1):
    - (a) revoke the exclusion; or
    - (b) determine the period for which the exclusion is to operate.”
- 45

**Amendment of the First Schedule**

- 8. The First Schedule of the principal Canon is amended by inserting the following items after item 22:

- 5                   “23   Date, applicable jurisdiction and particulars of a notifiable charge.  
                       24   Date, applicable jurisdiction and particulars of an adverse admission.  
                       25   Date, applicable jurisdiction and particulars of an adverse finding.”

**Amendment of the Second Schedule**

- 10           9.   The Second Schedule of the principal Canon is amended by inserting the following items after item 17:

- “18   Date, applicable jurisdiction and particulars of a notifiable charge.  
 15                 19   Date, applicable jurisdiction and particulars of an adverse admission.  
                       20   Date, applicable jurisdiction and particulars of an adverse finding.”

**Amendment of the Third Schedule**

- 20           10.   The Third Schedule of the principal Canon is amended by:

- (a)   inserting the following definition before the definition of “adverse criminal history check”:  
 25                                 **“adverse admission”** means an admission by a person of conduct occurring within or outside of Australia:  
                                       (a)   in proceedings before a court or tribunal within or outside of Australia;  
 30                                (b)   to a Church authority; or  
                                       (c)   to a Director of Professional Standards;  
                                       which a Director of Professional Standards certifies constitutes sexual misconduct or child abuse by that person;”  
 35                       (b)   inserting the following definition after the definition of “adverse criminal history check”:  
                                       **“adverse finding”** means:  
 40                                (a)   the conviction of a person of a criminal offence;  
                                       (b)   the finding that a person is guilty of a criminal offence without proceeding to a conviction; or  
                                       (c)   a finding against a person;  
                                       by a court or tribunal within or outside of Australia, which a Director of Professional Standards certifies constitutes sexual  
 45                                misconduct or child abuse by that person;”  
                               (c)   inserting the following definitions after the definition of “authorised person”:

- 5                   **"bullying"** means repeated behaviour directed to a child or children which a reasonable person, having regard to all the circumstances, would expect to victimise, humiliate, undermine or threaten the child or children, and which creates a risk to their health and safety;
- 10                   **"caution"** means a notice that one or both of Historical Information and Current Information to which a Director of Professional Standards has access in carrying out his responsibilities is incomplete;"
- 15                   (d) inserting as paragraph (a) in the definition of "child abuse the words:
- " (a) bullying; or"
- and renumbering paragraph (a) to (e) as paragraphs (b) to (f);
- 20                   (e) deleting all material after the colon in the definition of "Church body" and substituting the following material:
- "any body corporate, organisation or association that exercises ministry within, or on behalf of, or in the name of, the Church formed by or by the authority of the synod of a province or a diocese or the General Synod;"
- 25                   (f) deleting all material after subparagraph (iv) in paragraph (c) in the definition of "church worker";
- 30                   (g) deleting the words "other than" in the definition of "Current Information":
- (i) substituting the word "and" for the words "other than";
- 35                   (ii) inserting the words "where a notifiable complaint or a notifiable charge has been notified to the General Secretary for entry in the National Register" after the words "Exempt Information";
- 40                   (h) inserting the following words in the definition of "Exempt Information":
- (i) the words "or a notifiable charge" after the word "complaint" where firstly appearing: and
- 45                   (ii) the words "or the notifiable charge" after the word "complaint" where secondly appearing;

- 5
- (i) inserting the following words in the definition of “exhausted”:
- (i) the words “or a notifiable charge” after the word “complaint”;
- (ii) the words “or” at the end of paragraph (c); and
- 10 (iii) the following paragraph after paragraph (c):
- “(d) is one where a court or tribunal finds that it is more likely than not that the subject matter of the charge did not occur;”
- 15 (j) inserting the following definition after the definition of “neglect”:
- “notifiable charge”** means the charge of a person of:
- (a) the commission of a criminal offence; or
- 20 (b) the engagement in professional misconduct; occurring within or outside of Australia, which a Director of Professional Standards certifies arises out of alleged sexual misconduct or child abuse by that person.”
- 25

## **BILL 09**

### **A BILL FOR THE CONSTITUTION AMENDMENT (SENTENCES OF TRIBUNALS) CANON 2010**

#### **EXPLANATORY MEMORANDUM**

##### **Background**

1. The object of the constitutional amendments in this proposed Canon is to ensure that there is a greater range of sentences which can be recommended by a tribunal in dealing with the discipline of clergy and licensed lay persons.
2. The Constitution in section 60(1) specifies that a tribunal shall make such recommendation as it thinks just in the circumstances, but shall not recommend any sentence other than one or more of the following:
  - (a) deposition from orders;
  - (b) prohibition from functioning;
  - (c) removal from office;
  - (d) rebuke.
3. Clarifying the scope of the sentence prohibition from functioning and providing a greater range of sentences will enable the disciplinary tribunals of the Church constituted under the Constitution (diocesan tribunal, provincial tribunal, the Special Tribunal and the Appellate Tribunal) to better fulfill their function of protecting members of the Church and the public. In some cases an appropriate response to the conduct considered by the tribunal in question may be a sentence less severe than deposition from orders, prohibition from functioning or removal from office, but more severe than a rebuke. For example, the appropriate sentence may be that the holding of an office or a licence or the performance of a function be subject to a condition or restriction without limit of time or for a specific period of time, or that the person do or to refrain from doing a specified act.
4. It is important to provide an expanded range of sentences for these constitutional tribunals because there may not be an alternative disciplinary mechanism. For example, in those dioceses which have not adopted the *Episcopal Standards Canon 2007* only the Special Tribunal has jurisdiction to deal with the discipline of the diocesan bishop.

5. Recently the Church of England (*Clergy Discipline Measure 2003*, s 24) and the Church of Ireland (Constitution, s 33(d) and (f)) have expanded the range of sentences that can be imposed by their disciplinary tribunals to include similar sentences to those proposed by this Canon.

### **Clause Notes**

Clause 1 states the title of the Canon.

Clause 2 states, in accordance with section 67(2) of the Constitution, that the Canon comes into effect on a date appointed by the President.

Clause 3 amends the first paragraph of section 60(1) of the Constitution by amending the sentence in paragraph (b) and inserting three additional sentences.

The existing sentence of a prohibition is clarified to make clear that it may relate to the performance of any function without limit of time or for a specific period of time.

Additional sentences are revocation of any licence, an order that the holding of an office or a licence or the performance of a function be subject to a condition or restriction without limit of time or for a specific period of time, and an order to do or to refrain from doing a specified act. The sentence of revocation of any licence has been added because in some cases an office may be separate from a licence.

*Promoter:*        *Professional Standards Commission*  
*Contact:*        *Mr Garth Blake*



The General Synod prescribes as follows:

1. This Canon may be cited as the Constitution Amendment (Sentences of Tribunals) Canon 2010.

2. This Canon comes into effect on a date appointed by the President in accordance with section 67(2) of the Constitution.

3. In section 60(1) of the Constitution:

- 2-077

## **BILL 10**

### **A BILL FOR THE SPECIAL TRIBUNAL CANON 2007 AMENDMENT CANON 2010**

#### **EXPLANATORY MEMORANDUM**

##### **Background**

- 1 The object of this proposed Canon is to remove the requirement that the appointment of a member of the Episcopal Standards Commission requires the consent in writing of the Chancellors of each of the metropolitan dioceses.
- 2 The requirement of the consent in writing of the Chancellors of each of the metropolitan dioceses for the appointment of a member of the Episcopal Standards Commission has prevented the Standing Committee from appointing an additional member and could prevent the replacement of a member should a vacancy occur.
- 3 No declaration under s 30(b) of the Constitution has been included in the Bill because, as is clear from the reasoning of the Appellate Tribunal in its Determination dated 9 March 2010 on the reference which included the Special Tribunal Canon 2007, its provisions do not affect the order and good government of the Church within any diocese.

##### **Clause Notes**

Clause 1 states the title of the Bill and that the Special Tribunal Canon 2007 is referred to as the principal Canon.

Clause 2 provides for the deletion in section 5 of the principal Canon of the requirement of the consent in writing of the Chancellors of each of the metropolitan dioceses for the appointment of a member of the Episcopal Standards Commission.

## BILL 10

5                   **A BILL FOR THE SPECIAL TRIBUNAL CANON  
2007 AMENDMENT CANON 2010**

10           The General Synod prescribes as follows:

**Title**

- 1(1)   This Canon may be cited as the Special Tribunal Canon 2007  
          (Amendment) Canon 2010.
- 15    (2)   The Special Tribunal Canon 2007 is hereinafter referred to as “the  
          principal Canon”.

**Amendment of section 5**

- 2       Section 5 of the principal Canon is amended:
- 20    (a)   by the deletion of the words “with the consent in writing of the  
          Chancellors of each of the metropolitan dioceses” in  
          subsection (1);  
          by the deletion of subsections (3) and (4).”

## **BILL 11**

### **A BILL FOR THE APPELLATE TRIBUNAL CANON 1981 AMENDMENT (TRANSITIONAL EXTENSION OF TERM) CANON 2010**

#### **EXPLANATORY MEMORANDUM**

This Canon provides for a “temporary” remedy to the problem of part heard matters before the Appellate Tribunal being affected by the retirement of a member. It is a temporary solution until a proposed Constitutional amendment in Bill 04 can take effect. A further Explanatory Memorandum will follow.

*Promoter:*      *Church Law Commission*  
*Contact:*      *Mr Ian Walker*

## BILL 11

### 5                    **A BILL FOR THE APPELLATE TRIBUNAL CANON 1981 AMENDMENT (TRANSITIONAL EXTENSION OF TERM) CANON 2010**

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The General Synod prescribes:

#### **Amendment of the Appellate Tribunal Canon 1981**

- 15            1.    Insert section 4AA after section 4 of the Appellate Tribunal Canon  
1981–

20

4AA(1)    Despite sections 4 and 4A, the membership of a member  
of the Appellate Tribunal who is to vacate that office at the  
commencement of the ordinary session of the specified  
General Synod because the member has attained the age  
of 69 years (the retiring member) is extended from and  
including the day on which the ordinary session of that  
General Synod commences to midnight on the day of the  
publication of the decision, determination or opinion in  
respect of the last of any reference made to the Appellate  
Tribunal which was under consideration, but not  
completed, by the Appellate Tribunal at the  
commencement of the ordinary session of that General  
Synod.

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- (2)        Despite such extension of the membership of the retiring  
member, the seat of the retiring member on the Appellate  
Tribunal will be deemed to be vacant at the  
commencement of the ordinary session of that General  
Synod for the purpose only of permitting the nomination of  
a person (the replacement member) to fill the vacancy in  
respect of the retiring member under section 4A at the  
ordinary session of that General Synod.

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- (3)        The commencement of the period of the office of the  
replacement member will be postponed until the day  
following the day on which the retiring member ceases to  
be a member.

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- (4)        In this section, “**the specified General Synod**” means the  
15<sup>th</sup> General Synod or the 16<sup>th</sup> General Synod.

**Commencement**

- 5           2.     This Canon will come into force from the beginning of the day on  
              which the ordinary session of the 15<sup>th</sup> General Synod commences.

**Repeal**

- 10           3.     Section 4AA of the Appellate Tribunal Canon 1981, as enacted by this  
              Canon, is repealed on the earlier of:

- (a)    the date upon which the Constitution Amendment (Appellate  
                      Tribunal – Part Heard Matters) Canon 2010 takes effect;  
15           (b)    31 December 2015.

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## **BILL 12**

### **A BILL FOR THE NATIONAL ABORIGINAL AND TORRES STRAIT ISLANDER ANGLICAN COUNCIL CANON 2010**

#### **EXPLANATORY MEMORANDUM**

In 2007, the Standing Committee appointed a Committee to Review Aboriginal and Torres Strait Islander Ministry (“the Horsburgh Committee”) whose three reports are posted on the General Synod Website. A summary will be included in the report of the Joint Working Group of the Standing Committee and the National Aboriginal and Torres Strait Islander Anglican Council Executive in Book 3 of the papers for this Session of the General Synod, *Standing Committee Report*.

One of the recommendations of the Horsburgh Committee was to review the National Aboriginal and Torres Strait Islander Anglican Canon 1998. The Standing Committee and the Executive of NATSIAC appointed a Joint Working Group to carry forward recommendations of the Horsburgh Committee, including a review of the Canon.

The NATSIAC members of the Joint Working Group identified some areas where the Canon could be improved to enable NATSIAC to align more closely with current needs identified from the perspective of the experience of the last 20 years or more. The deliberations of the Joint Working Group resulted in an overhaul of the National Aboriginal and Torres Strait Islander Anglican Council Canon 1998 to focus on the following:

1. The Canon should be firmly set in the context of the Joint Commitment and Affirmation of Faith and Justice passed by resolution 48/07 of the 14<sup>th</sup> Session of the General Synod in 2007. Clause 5 of the Bill does so.
2. It is necessary to re-shape the objects of NATSIAC to overcome the deficiencies identified in the Horsburgh report. The NATSIAC Gathering in 2007 identified more relevant objects. New objects are contained in Clause 6 of the Bill.
3. It is necessary to reduce the size of the Council to make it more workable. Should the business of NATSIAC being conducted by its Executive which has limited powers. NATSIAC felt it best to reduce the Council to a size slightly larger than the current Executive and to

add governance skills to the criteria for Council members (Clause 9 of the Bill). The Council may appoint an additional Aboriginal person and an additional Torres Strait Islander person to supplement the skill base (Clause 11).

4. Not all dioceses have availed themselves of the opportunity under the current Canon to appoint members of the Council and a number of dioceses are unable to appoint members of one or other indigenous group. It is proposed to overcome these difficulties by providing for each diocese to appoint members of a Panel of Electors which, in turn, elects members of the Council at each annual Gathering of Aboriginal and Torres Strait Islander Anglicans. Equal numbers of Aboriginal Council members and Torres Strait Islander Council members are to be elected. Only Aboriginal members of the Panel of Electors may elect Aboriginal members of the Council and only Torres Strait Islander members of the Panel of Electors may elect Torres Strait Islander members of the Council.
5. NATSIAC's experience suggests that triennial Gatherings of Aboriginal and Torres Strait Islander Anglicans at which a Panel of Electors elects members of the Council are preferable to the current biennial regime. Provisions relating to the election of Council members are contained in Clauses 15 to 22 of the Bill.
6. The Horsburgh Committee's findings make it necessary to expand the powers of the Council to include the power to raise funds (Clause 24). Provisions have been included to enhance financial management of the Council (Clauses 27 and 28). There is a need for a power to fill casual vacancies (Clause 31).
7. It was thought unnecessary to make any change to Part 3 of the current Canon.
8. Because of the lead time for dioceses to appoint a panel of electors, the transitional provisions in Part 4 of the Bill provide for a Transitional Council constituted as set out in Clauses 9 and 10 of the Bill to operate until the first Gathering can be held. That first Gathering must be held within 3 years of the Canon coming into force.

The Church Law Commission has been requested to review the Bill but will not have had an opportunity to do so until it meets in July 2010.

*Promoter: Joint Working Group on Aboriginal and Torres Strait Islander Ministry*  
*Contact: Bishop Glenn Davies and Archdeacon Brian Kirk*



## BILL 12

### 5            **A BILL FOR THE NATIONAL ABORIGINAL AND TORRES STRAIT ISLANDER ANGLICAN COUNCIL CANON 2010**

The General Synod prescribes as follows:-

10

#### **Part I - Preliminary**

##### ***Title***

- 15            1.    This Canon may be cited as the “National Aboriginal and Torres Strait  
Islander Anglican Council Canon 2010”.

##### ***Organisation of Canon***

- 20            2.    This Canon is divided into the following parts -

- Part I -     Preliminary.  
Part II -     National Aboriginal and Torres Strait Islander Anglican  
                 Council.  
25            Part III -    Non-diocesan representatives of General Synod.  
                 Part IV –    Transitional Provisions.

##### ***Repeal***

- 30            3.    The National Aboriginal and Torres Strait Islander Anglican Council  
Canon 1998 (“Repealed Canon”) is repealed except that (save as  
provided in this Canon expressly or by necessary implication) all  
persons, things and circumstances appointed or created by or under  
35            the Repealed Canon or existing or continuing under it immediately  
before the date of commencement under and subject to this Canon  
continue to have the same status, operation and effect as they  
respectively would have had if the Repealed Canon had not been so  
repealed.

##### ***Commencement***

- 40            4.    This Canon shall come into force on 1 October 2010.

##### ***Joint Commitment and Affirmation of Faith and Justice***

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5.    This Canon is passed in the spirit of the Joint Commitment and  
Affirmation of Faith and Justice passed by resolution 48/07 of the

fourteenth Session of the General Synod in 2007 and reproduced in the Schedule to this Canon.

**Part II - National Aboriginal and Torres Strait Islander Anglican Council**

5

***The Council***

6. There shall be a National Aboriginal and Torres Strait Islander Anglican Council, which in this Canon is called “the Council”.
- 10 7. The objects of the Council shall be:
- (a) to represent the views of Aboriginal and Torres Strait Islander Anglicans on matters affecting them both within and outside Australia.
- 15 (b) to develop and recommend to relevant bodies policies and strategies for the purpose of facilitating Aboriginal and Torres Strait Islander mission and ministry.
- 20 (c) to provide resources for relevant bodies concerning matters affecting Aboriginal and Torres Strait Islander Anglicans.
- (d) to engage with other Aboriginal and Torres Strait Islander groups in the wider church in Australia and internationally.
- 25 (e) to encourage and facilitate the celebration of Aboriginal and Torres Strait Islander culture within the Church.
- 30 (f) to convene gatherings of persons who identify themselves as Aboriginal or Torres Strait Islander Anglicans at intervals of 3 years (“Gatherings”) to conduct such business as the Council or the Gatherings determine.
- 35 In this Section, relevant bodies include this Church, the General Synod of this Church, the Standing Committee of the General Synod, diocesan synods, diocesan councils, diocesan bishops and other bodies having responsibility for or a connection with Aboriginal and Torres Strait Islander mission or ministry.
- 40 8. Before each election of members of the Council, the Council must determine and communicate to the members of the Panel of Electors the set of skills and experience the Council believes is required for the Council as a whole to fulfil its objects.
- 45 9. To be qualified to be a member of the Council a person must -
- (a) be a communicant member of this Church;

- (b) have attained the age of 18 years;
- (c) be an Aboriginal or Torres Strait Islander;
- 5 (d) in the case of a person in holy orders (other than a diocesan bishop), hold a licence from a bishop of a diocese of this Church;
- (e) in the case of a bishop, hold an office in this Church; and
- 10 (f) possess skills and experience in one or more of the areas determined by the Council in accordance with Section 8 of this Canon to be necessary for the Council to fulfil its objects effectively.
- 15
- 10. The members of the Council shall be:
  - (a) three Aboriginal persons in holy orders, one of whom must be a bishop holding an office in this Church but, if there is no such Aboriginal bishop, then three Aboriginal persons in holy orders;
  - 20 (b) three Torres Strait Islander persons in holy orders, one of whom must be a bishop holding an office in this Church but, if there is no such Torres Strait Islander bishop, then three Torres Strait Islander persons in holy orders;
  - 25 (c) three Aboriginal lay persons and three Torres Strait Islander lay persons; and
  - 30 (d) such other persons as the Council may appoint pursuant to Section 11 of this Canon.
- 11. The Council may appoint two persons, an Aboriginal person and a Torres Strait Islander person, to be members of the Council for purposes of supplementing the set of skills determined by the Council pursuant to Section 7 of this Canon.
- 35
- 12. Subject to Section 13 of this Canon, members of the Council shall hold office until the completion of the election of members of the Council conducted at the Gathering next held after the appointment of those members.
- 40
- 13. A person shall cease to be a member of the Council should he or she resign to the Primate, cease to be qualified to be a member of the Council, have his or her estate administered in insolvency or be declared by any court of competent jurisdiction to be incapable of managing his or her affairs.
- 45

14. The Council must elect a Chairman and a Deputy Chairman as soon as practicable after an election of members of the Council.

5       ***Election of Council Members***

15. There shall be a Panel of Electors to elect members of the Council.

- 10       16. To be qualified to be a member of the Panel of Electors a person must:

- 15               (a) be a communicant member of this Church;
- (b) have attained the age of 18 years;
- (c) be an Aboriginal or Torres Strait Islander;
- (d) in the case of a person in holy orders (other than a diocesan bishop) hold a licence from a bishop of a diocese of this Church;
- 20               (e) not be a bishop.

- 25       17. At least 18 months before the commencement of each Gathering, the Council must cause to be given to the Registrar of each Diocese written notice of:

- (a) the date of the commencement of that Gathering, and
- (b) the requirements of Section 16 of this Canon.

- 30       18. Not less than three months before the commencement of each Gathering, the Synod of each Diocese may elect two Aboriginal persons and two Torres Strait Islander persons to be members of the Panel of Electors and notify the appointments to the Council in writing.

- 35       19. Subject to Section 20 of this Canon a person shall hold office as a member of the Panel of Electors from the commencement of the day following the conclusion of the session of the Synod at which the member was elected until the conclusion of the session of the Synod
- 40               which appoints the member's successor.

- 45       20. A person shall cease to be a member of the Panel of Electors if the member resigns in writing to the diocesan bishop of the diocese whose synod elected the member, ceases to be qualified to be a member of the Panel of Electors, has his or her estate administered in insolvency or be declared by any Court of competent jurisdiction to be incapable of managing his or her affairs.

21. Upon a member of the Panel of Electors ceasing to hold office, the diocesan council of the diocese which elected that member may as soon as practicable fill the vacancy and notify the Council of the member newly elected.
22. At each Gathering:
- (a) if at that time more than one Aboriginal bishop holds an office in this Church, the Aboriginal members of the Panel of Electors must elect one such Aboriginal bishop to be a member of the Council;
  - (b) if at that time more than one Torres Strait Islander bishop holds an office in this Church, the Torres Strait Islander members of the Panel of Electors must elect one such Torres Strait Islander bishop to be a member of the Council;
  - (c) the Aboriginal members of the Panel of Electors must elect as members of the Council:
    - (i) two Aboriginal persons in holy orders other than a bishop but if at that time there is no Aboriginal bishop holding an office in this Church, then three Aboriginal persons in holy orders;
    - (ii) three Aboriginal lay persons;
  - (d) The Torres Strait Islander members of the Panel of Electors must elect as members of the Council:
    - (i) two Torres Strait Islander persons in holy orders other than a bishop but if at that time there is no Torres Strait Islander bishop holding an office in this Church, then three Torres Strait Islander persons in holy orders;
    - (ii) three Torres Strait Islander lay persons.

***Other Powers and Duties of the Council***

23. The Council may co-opt persons who may, but need not be, Aboriginal or Torres Strait Islander persons as consultants to the Council for such term as the Council thinks fit. A consultant will undertake such tasks as agreed with the Council and participate with the Council as the Council determines but will not have the right to vote.

24. The Council may raise funds to fulfil its objects.
25. The Council may appoint such staff as it considers necessary to fulfil its objects.
- 5 26. The Council may request the Standing Committee of General Synod to confer on it and the Standing Committee may by resolution confer on the Council objects in addition to those listed in Section 7, provided that, unless such resolution is confirmed by the General Synod at its next succeeding ordinary session, the additional objects shall then lapse, but not so as to affect the validity of anything done before such lapsing.
- 10 27. The Council must establish and maintain policies and procedures for the management of its finances and business which conform with the requirements of prudence and best practice.
- 15 28. The Council shall comply with the Financial Protection Canon 1995 and all other relevant canons and rules of the General Synod.
- 20 29. The Council shall report in writing to each ordinary session of General Synod as to its activities, needs and any other matter it considers appropriate.
- 25 30. The Council may do all things necessary and incidental to fulfilling its objects, powers and duties.
- 30 31. The Council and the Standing Committee of the General Synod must jointly review the operation of this Canon and report to the Second Session of the General Synod following the date on which this Canon comes into force.
32. If a vacancy occurs in the Council:
- 35 (a) The Council may fill the vacancy;
- (b) The office of an Aboriginal person must be filled by an Aboriginal person;
- 40 (c) The office of a Torres Strait Islander person must be filled by a Torres Strait Islander person;
- (d) The person filling the vacancy shall hold office until the next election of a Council.
- 45

### **Part III - Non-diocesan Representatives of General Synod**

- 5           33. The Council is appointed to be the body for the purpose of sub-section 17(8) of the Constitution to recommend to the Primate the names of persons for appointment as non-diocesan representatives of the General Synod. Of its own motion and at the request of the Primate the Council shall provide the names of the persons elected by the Council for nomination to the Primate.
- 10           34. A person who is qualified to be a member of the Council is qualified to be a non-diocesan representative of the General Synod if that person is not a diocesan bishop or (with regard to the General Synod) a clerical or lay representative of a diocese.
- 15           35. When the Primate by mandate summons the diocesan bishops to convene clerical and lay representatives to an ordinary or special session of the General Synod the Primate shall -
- 20               (a) appoint non-diocesan representatives of the General Synod being persons nominated by the Council, each of whom shall hold office so long as he or she remains qualified to do so until his or her successor is appointed or until he or she sooner resigns;
- 25               (b) call such non-diocesan representatives to the session of the General Synod;
- 30               (c) cause bills for canons and other documents circulated to dioceses or accompanying the mandate to diocesan bishops to be sent to non-diocesan representatives of the General Synod.

### **Part IV - Transitional Provisions**

- 35           36. The council constituted under the Repealed Canon shall:
- 40               (a) Continue to hold office and exercise its functions until the appointment of a Transitional Council in accordance with sub-section (b);
- (b) Within three months of this Canon coming into force, appoint a Transitional Council, composed in accordance with the requirements of Sections 9 and 10 of this Canon.
- 45           37. The Transitional Council shall have the powers and duties of the Council set out in this Canon until the appointment of the Council at the first Gathering pursuant to Section 22 of this Canon.

38. The Transitional Council must convene the first Gathering within three years of this Canon coming into force.

5

## Schedule

### JOINT COMMITMENT AND AFFIRMATION OF FAITH AND JUSTICE

10 AS members of the Anglican Church of Australia we are called to become a people of the new covenant of Jesus the Christ and to bear witness to justice and righteousness upon this land. We come together, Indigenous and non-Indigenous peoples, to strive for what our ancestors were not able to do.

15

TOGETHER we acknowledge with gratitude the apology given by our then Primate, Archbishop John Grindrod in 1988 for the hurt done to Aboriginal and Torres Strait Islander peoples and the apology of the General Synod in 1998 for the Stolen Generations. We acknowledge also the ceremonies, Church services and reconciliation projects done at parish level throughout the Country. Today we are able, by the grace of God to look back on these actions as steps on the road of a reconciling life together in the Church of God. We look to a future of walking together towards the image of Christ which points to shared faith and justice among us.

25

TOGETHER we commit ourselves to living out the new covenant written upon our hearts in our common faith and sharing in Word and Sacrament. In hope and prayer we look to fulfil our responsibilities to each other to share our cultures in the study and living of The Word and Sacrament, to share in our Church tradition, and to be a community of justice and righteousness.

30

WE, the people of the land and seas, the Aboriginal and Torres Strait Islander peoples, as guardians and custodians of the land and islands of Australia, seek a new day when our peoples can practise and share our culture and wisdom as partners with all who call Australia their home.

35

WE, the non-Indigenous peoples of Australia recognise the people of the land and the seas, the Aboriginal and the Torres Strait Islander peoples to be the original inhabitants, the indigenous peoples of this land.

40

WE, together through this shared commitment continue to seek to heal the wounds, hurts and sufferings of the Aboriginal and Torres Strait Islander peoples of Australia.

45

WE shall share with each other visions, hopes, needs and wants in constructive ways that will bring us closer together as peoples of this Church so we may better support each other.



5 AS peoples of Christ we are bound into a relationship that seeks to be the foundation of mutual trust, respect, and the sharing of power and resources to create a just and righteous Church and nation of Australia. Through this commitment our own homes, communities, parishes, dioceses and national organisations are to be sanctuaries where we will strive to live out to the fullest the tenets of this our shared faith.

10 We are committed to celebrating together important Church festivals and cultural celebrations and commemorations in the life of our land and seas. This gives us the opportunity to share deeply our different ways of celebrating our faith through cultures as peoples and communities of prayer.

15 WE are committed to assisting, encouraging and resourcing ministry to Aboriginal and Torres Strait Islander people.

20 WE pledge to consult and work with each other as equal partners in the development of our Church and land, in our communities, parishes, dioceses and nationally and internationally.

We shall establish means through which we can give witness and testimony accounting for the learnings, struggles, challenges and successes of our journey.

25 AND we invite all who call Australia their home to join with us as we continue the process of healing our peoples and this land and seas.

## **BILL 13**

### **A BILL FOR THE NATIONAL ABORIGINAL AND TORRES STRAIT ISLANDER ANGLICAN COUNCIL CANON 1998 AMENDMENT CANON 2010**

#### **EXPLANATORY MEMORANDUM**

1. The National Aboriginal and Torres Strait Islander Anglican Council Canon 1998 ('NATSIAC Canon') establishes a Council to represent the interests of Aboriginal and Torres Strait Islander members of the Church.
2. In attempting to represent in an equitable way the interests of these Church members, section 5(4) stipulates that the majority of dioceses be represented by "one Aboriginal person and one Torres Strait Islander person resident in each diocese".
3. For the Diocese of Perth, the necessity to nominate one communicant Torres Strait Islander person has proven difficult.
4. The amendments proposed by this Bill would permit the Diocese of Perth to nominate two Aboriginal members whilst not excluding the possibility of nominating a Torres Strait Islander member in future.

*Promoter:*        *Diocese of Perth*  
*Contact:*        *Mr Hamish Milne*

## BILL 13

5           **A BILL FOR THE NATIONAL ABORIGINAL AND TORRES STRAIT  
ISLANDER ANGLICAN COUNCIL CANON 1998 AMENDMENT  
CANON 2010**

10           The General Synod prescribes as follows:

**Title**

- 15           1.     This Canon may be cited as the “NATSIAC Canon Amendment Canon  
2010”.

**Amendments of section 5**

- 20           2.     Section 5(4) of the NATSIAC Canon is amended by deleting the  
words “sub-sections (2) and (3)” and by inserting in lieu thereof the  
words “sub-sections (2), (3) and (4)”.

3.     Section 5(4) is renumbered 5(5).

- 25           4.     Section 5(5) is renumbered 5(6).

5.     A new 5(4) is inserted as follows:

30                     “two persons nominated by the bishop of the Diocese of Perth;”

35

## BILL 14

### **A BILL FOR THE CONSTITUTION OF THE PROVINCE OF WESTERN AUSTRALIA 1914-1984 AMENDMENT CANON 2009 (No 1 of 2009) RATIFICATION CANON 2010**

#### **EXPLANATORY MEMORANDUM**

The Province of Western Australia seeks ratification by the General Synod of amendments to the Constitution of the Province contained in the Constitution of the Province of Western Australia 1914-1984 Amendment Canon 2009 (No 1 of 2009).

Section 41 of the Constitution of the Anglican Church of Australia provides that:

1. *The Constitution of a Province may be altered in accordance therewith; and*
2. *An alteration of the Constitution of a Province shall not take effect until ratified by a Canon of the General Synod.*

Section 28(b) of the Provincial Constitution provides:

*This constitution may be altered in any respect whatsoever by a Canon for that purpose which firstly shall be approved by Council then by resolution thereof communication by the President to each of diocesan synods in the Province through their bishop then at their next ordinary or special meeting assented to by at least two-thirds of the dioceses and finally adopted at the next succeeding meeting of the Council by a vote by orders in the affirmative.*

The Synods of the Dioceses of Bunbury and Perth assented to the proposed amendments in 2009.

The Synod of the Diocese of North West Australia will next meet in 2011, but the Diocesan Council has resolved to assent to the proposed amendments to the Provincial Constitution.

The Provincial Council has yet to adopt the amendments finally by a vote by orders in the affirmative. The Council will be asked to take that step when it next meets on 18 August 2010.

The text of the Constitution of the Province of Western Australia 1914-1984 Amendment Canon 2009 (No 1 of 2009) is set out below.

*WHEREAS it is deemed desirable to amend the Constitution of the Province of Western Australia 1914-1984,*

*BE IT RESOLVED by the Bishops Clergy and Laity of the Province of Western Australia in Provincial Council Assembled:*

- 1. In this Canon the Constitution of the Province of Western Australia 1914-1984 is "the Principal Canon".*
- 2. In section 1 of the Principal Canon, the words "of Western Australia" be added after the word "Province" and the words "-1984" be deleted.*
- 3. In section 24 of the Principal Canon, paragraphs (e) to (i) inclusive be deleted and be replaced with the following paragraphs:*
  - (e) In the event of failure to elect within a period of twelve calendar months from the date of the vacancy of the See the election shall vest in the Diocesan Council unless it extends the period for election by the Committee, which it may do for periods of six months at a time.*
  - (f) When a person has been elected as Archbishop the Administrator of the Diocese of Perth shall certify the name of such person elected to the Primate or the Senior Diocesan Bishop of the Province of Western Australia or the Chancellor of the Diocese of Perth for confirmation as to canonical fitness as defined in section 74 (1) of the Constitution of the Anglican Church of Australia.*
  - (g) If canonical fitness is not confirmed within fourteen days of such certification, such election shall be null and void and proceedings shall be taken as if the vacancy in the See occurred at the time of such certification.*
  - (h) On receipt of the confirmation of canonical fitness, the Administrator of the Diocese of Perth shall*

*inform the diocesan bishops of the Province of Western Australia of the name of the elected person.*

(i) *Deleted.*

4. *This Canon may be cited as the Constitution of the Province of Western Australia 1914-1984 Amendment Canon 2009 (No 1 of 2009).*

Set out below is the text of the Explanatory Memorandum submitted to the Synod of the Diocese of Perth in respect of the Constitution of the Province of Western Australia 1914-1984 Amendment Canon 2009 (No 1 of 2009):

A. The amendments proposed by this Bill will:

1. Provide for the Constitution of the Province of Western Australia 1914-1984 as amended to be correctly cited as the "Constitution of the Province of Western Australia 1914". Section 1 of the Principal Canon mistakenly omits the words "of Western Australia".
2. Extend the period the Committee has to elect a new Metropolitan from 9 calendar months to 12 calendar months from the date of the vacancy of the See.
3. Allow the Diocesan Council of the Diocese of Perth to extend the election period for further periods of 6 months at a time or elect a new Metropolitan itself if the Committee fails to do so within the election period or extended period(s).

The Principal Canon provides that in the event of a failure to elect within 9 calendar months from the date of the vacancy of the See the election shall vest in a meeting of the Metropolitans of the Church convened by the Primate of the Church.

4. Simplify the process of confirmation as to canonical fitness as defined in section 74 (1)<sup>1</sup> of the Constitution of the Anglican Church of Australia by the Primate or the Senior Diocesan Bishop of the Province of Western Australia or the Chancellor of the Diocese of Perth.

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<sup>1</sup> "Canonical fitness" means, as regards a person, that:  
(a) the person has attained at least 30 years of age;  
(b) the person has been baptised; and  
(c) the person is in priests' orders

The Principal Canon provides that:

- 24(e) The Administrator transmit the name of the elected person together with a certificate of his election to the Senior Bishop.
- 24(f) The Senior Bishop communicate the name and certificate to the other diocesan bishops of the Province within seven days.
- 24(g) The diocesan bishops (or a majority of them) shall within fifteen days satisfy themselves as to the canonical fitness of the person so elected.
- 24(h) If the diocesan bishops (or a majority of them) shall be so satisfied, the Senior Bishop shall within a further fourteen days submit the name together with the certificate of his election to the Primate for confirmation as required.

Proposed section 24(f) will effectively replace sections 24(f), 24(g) and 24(h) of the Principal Canon.

- B. The amendments proposed by this Bill will effect the following drafting changes:

Proposed section 24(g) will effectively replace section 24(i) of the Principal Canon.

The text in section 24(h) of the Principal Canon will be replaced with the words:

On receipt of the confirmation of canonical fitness, the Administrator of the Diocese of Perth shall inform the diocesan bishops of the Province of Western Australia of the name of the elected person.

The text in section 24(i) of the Principal Canon will be replaced with the word 'Deleted'.

- C. It is intended that The Perth Archbishopric Statute 1978 (of the Synod of the Diocese of Perth) will be amended in line with the decisions of Provincial Council.
- D. The Church Law Commission had not had an opportunity to consider the Bill in detail before the preparation of Book 2 for printing, but will do so when it meets in July 2010. The Commission believes that, when the relevant parties to the Constitution agree on the proposed amendment, it is possible for the General Synod to ratify the amending Provincial Canon even though a condition precedent has not been met. Because the Church Law Commission has not had the opportunity to consider the necessary drafting, the Bill presented in this Book 2 contains only the operative substance of the ratification. Any further comments or amendments will be notified to members of General Synod as soon as possible.

BILL 14 – EXPLANATORY MEMORANDUM

*Promoter:*      *The Province of Western Australia*  
*Contact:*      *Mr Hamish Milne*



## BILL 14

5                   **A BILL FOR THE CONSTITUTION OF THE PROVINCE OF**  
                  **WESTERN AUSTRALIA 1914-1984 AMENDMENT CANON 2009**  
                  **(No 1 of 2009) RATIFICATION CANON 2010**

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The General Synod prescribes as follows:

- 15           1.    This Canon may be cited as the *Constitution of the Province of*  
                  *Western Australia 1914-1984 Amendment Canon 2009 (No 1 of 2009)*  
                  *Ratification Canon 2010.*
2.    The General Synod ratifies the Constitution of the Province of  
20                Western Australia 1914-1984 Amendment Canon 2009 (No 1 of 2009)  
                  Canon.

## **BILL 15**

### **A BILL FOR THE CONSTITUTION ALTERATION (CHAPTER V) CANON 2010**

#### **EXPLANATORY MEMORANDUM**

1. From time to time there is a need to amend a canon to satisfy a change in government regulatory requirements. Government legislative programs in company law, taxation law and superannuation come readily to mind. Only General Synod can make or amend canons.
2. The addition of this new section to the Constitution provides flexibility in dealing with situations which require a canon of General Synod.
3. General Synod meets every three years. Originally it met every four years. Holding a session of Synod is expensive. There is the complaint that there is too much legislation. Use of this new section will allow the Standing Committee to initiate the consideration of “house-keeping” canons. The final say rests with the dioceses. Unless all dioceses agree, the promoters will need to take the bill to the next General Synod session.

*Promoter: Diocese of Sydney*  
*Contact: Mr Robert Tong*

**BILL 15****5                    A BILL FOR THE CONSTITUTION ALTERATION (CHAPTER V)**  
**CANON 2010**

The General Synod prescribes as follows:

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1.        This Canon is the 'Constitution Alteration (Chapter V) Canon 2010.
2.        In Chapter V of the Constitution, after Section 28 insert:

15

“28A (1) In this section “bill” does not include a bill for a canon to alter this Constitution or a bill which deals with or concerns the ritual ceremonial or discipline of this Church.

20

(2) In addition to the procedure in section 27 (1), a canon may be made by a bill sent by the Standing Committee to each diocesan synod and if all diocesan synods assent to it by ordinance and if all such assents be in force at the same time, the General Secretary shall certify that fact to the Primate in writing, and on that date the canon shall come into effect.”

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## **BILL 16**

### **A BILL FOR THE RESTRAINT ON CERTAIN CONSECRATIONS CANON 2010 (PROVISIONAL CANON P3, 2004)**

#### **EXPLANATORY MEMORANDUM**

At its 13<sup>th</sup> Session in 2004, the General Synod passed the Restraint on Certain Consecrations Canon 2004 as a Provisional Canon known as Provisional Canon P3, 2004.

Not all dioceses have assented to the Provisional Canon, accordingly, the Canon will be presented to the Fifteenth Session of the General Synod as if it were a Bill, pursuant to Section 28(3)(iii) of the Constitution.

Section 28(3)(iv) of the Constitution requires a majority of at least two-thirds of the members of each of the three houses present for one of these Bills to become a Canon. However, if before that vote is taken, a majority of the three houses voting together resolves that the Bill shall be a Provisional Canon only, the whole of the procedure under Section 28(3) must be followed again.

The report on this Bill required by Section 28(3)(iii) is found in Book 3 of the Synod papers, *Standing Committee Report*.

ooOOoo

This Bill provides that it is an offence (section 5) to be consecrated bishop, or to take part in the consecration of a bishop, in this Church or any other church or religion otherwise than in accordance with the Constitution and relevant Canons and Ordinances (sections 2 and 3).

An exception is made (section 4) if the consecration is in a church that is in communion with this Church or relates to the involvement in the ministry of another church under a covenant or arrangement between the churches.

Section 4 also provides that the offence does not apply in the case of the Primate or a Metropolitan or a person acting under the authority of the Primate or a Metropolitan.

Section 6 provides that the Canon does not come into force in a diocese until adopted by ordinance of the synod of the diocese.

### **AMENDMENTS TO BE PROPOSED IN COMMITTEE**

Before the 14<sup>th</sup> Session of General Synod in 2007, a number of amendments were proposed to the Bill. They are set out below:

1. It is proposed to make it clear that the reference in section 2 to a relevant canon or ordinance is a reference to a canon or ordinance of this Church.

In section 2, after "ordinance" **insert** "of this Church".

2. It is proposed to make it clear that the reference in section 3 to participation in a consecration is a reference to participation as a consecrator or co-consecrator.

In section 3, after "participate" **insert** "as consecrator or co-consecrator".

3. It is proposed to make it clear that the reference in section 3 to a relevant canon or ordinance is a reference to a canon or ordinance of this Church.

In section 3, after "ordinance" **insert** "of this Church".

A second version of the Bill incorporating the proposed amendments marked up follows the Bill.

## BILL 16

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### **A BILL FOR THE RESTRAINT ON CERTAIN CONSECRATIONS CANON 2010 (PROVISIONAL CANON P3, 2004)**

10

The General Synod prescribes as follows:

1. This Canon may be cited as the “Restraint on Certain Consecrations Canon 2004”.
- 15 2. A person who is a bishop, priest or deacon in this church must not be consecrated bishop in this church or in another church or religion otherwise than in accordance with the constitution and any relevant canon or relevant ordinance.
- 20 3. A person who is a bishop in this church must not participate in the consecration of a person as a bishop of this church or of another church or religion otherwise than in accordance with the constitution and any relevant canon or relevant ordinance.
- 25 4. Sections 2 and 3 do not apply:
  - (a) if the other church is a church in communion with this church; or
  - 30 (b) in relation to any involvement in the ministry of another church under a covenant or arrangement entered into between this church and the other church; or
  - (c) if the person is the Primate or a Metropolitan; or
  - 35 (d) if the person acts with and in accordance with the written consent of the Primate or a Metropolitan.
- 40 5. A person who acts in breach of Section 2 or 3 commits an offence for the purposes of Section 1 or 2 of the Offences Canon 1962.
- 45 6. 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 of the Synod of a diocese.

10 **Marked up to show the effect of amendments to be proposed in**  
**Committee**

2-107

6. 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 of the Synod of a diocese.



## **BILL 17**

### **A BILL FOR THE SOLEMNIZATION OF MATRIMONY CANON 1981 AMENDMENT CANON 2010 (PROVISIONAL CANON P01, 2007)**

#### **EXPLANATORY MEMORANDUM**

At its 14<sup>th</sup> Session in 2007, the General Synod passed the Solemnization of Matrimony Canon 1981 Amendment Canon 2007 as a Provisional Canon known as Provisional Canon P01, 2007.

Not all dioceses have assented to the Provisional Canon, accordingly, the Canon will be presented to the Fifteenth Session of the General Synod as if it were a Bill, pursuant to Section 28(3)(iii) of the Constitution.

Section 28(3)(iv) of the Constitution requires a majority of at least two-thirds of the members of each of the three houses present for one of these Bills to become a Canon. However, if before that vote is taken, a majority of the three houses voting together resolves that the Bill shall be a Provisional Canon only, the whole of the procedure under Section 28(3) must be followed again.

The report on this Bill required by Section 28(3)(iii) is found in Book 3 of the Synod papers, *Standing Committee Report*.

ooOOoo

The following explanatory information was prepared by Bishop Glenn Davies on behalf of the Doctrine Commission to be read with the Bill to amend the Solemnization of Matrimony Canon 1981.

#### **Introduction**

1. In 1981 the General Synod passed the Solemnization of Matrimony Canon. This canon repealed the relevant canons of 1604 and introduced rules, which by and large reflected the principles of 1604, though with some notable exceptions.

2. The changes in the main reflected differing circumstances between seventeenth century England and twentieth century Australia. The areas of adaptation between 1604 and 1981 included the following:
  - (a) marriage can be performed by a deacon as well as a priest;
  - (b) the celebrant is to be registered under Commonwealth law;
  - (c) marriage requires at least one party to be baptised;
  - (d) marriage can be held in other than a church or chapel, with the bishop's permission;
  - (e) marriage can be held at times other than between 8am and 3pm;
  - (f) marriage of a minor is allowed under relevant Commonwealth law;
  - (g) marriage of divorced persons is allowed under relevant diocesan laws.

It is the third of these provisions, which is the subject of this paper.

3. It is not entirely clear why the General Synod chose to insert the requirement that one of the parties to be married must be baptised. The canons of 1604 make no reference to the baptismal status of either party seeking marriage. It is often supposed that the reason for this is that the *Book of Common Prayer* assumed all English people to be baptised as infants. However, the opening rubric in the Order for the Burial of the Dead, indicates that the office is not to be used for any unbaptised person.<sup>1</sup> Thus the existence of unbaptised persons in England was clearly recognised. Nonetheless, although baptism is not explicitly required of those who wish to be married, the form of Solemnisation of Matrimony implies that both parties are baptised and confirmed, given the admonition that they should partake of the holy communion either during the service or at the first opportunity thereafter.
4. When the Anglican Church of Australia considered changing the expectation that both parties must be baptised, two questions would naturally have arisen: (1) Can the Church solemnise the marriage of

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<sup>1</sup> According to Canon 68, a minister could not refuse to bury a person unless that person "were denounced excommunicated". This dictum dates back as far as Pope Leo the Great (448): "we cannot hold communion in death with those who in life were not in communion with us." Presumably the 1662 *BCP* was expressing the same principle when it extended the exclusion from Christian burial to the unbaptised and those who have laid violent hands upon themselves, as well as the excommunicated. These exclusions continue in the Church of England today, although other orders of service are now permissible (Canon B38).

an unbeliever and a believer? (2) Can the Church solemnise the marriage of two unbelievers?<sup>2</sup>

### Mixed Marriages

5. Under the Mosaic covenant Israelites were forbidden marriage with the nations of Canaan (Deut 7:3). Abraham's concern that Isaac marry one of his own kin and not a Canaanite woman followed a similar principle, as it was for Isaac's son Jacob (Gen 28:1-2). This was not merely for the sake of racial purity, but a moral purity to produce godly seed (Ezra 9:2; Mal 2:15). Despite the deception of the sons of Jacob in relation to Shechem and Hamor, they rightly enunciated the principle that foreign males must be circumcised before taking Abrahamic daughters (Gen 34:15).<sup>3</sup> Interracial marriages did take place (notable examples being Moses and Boaz), but in each case the non-Israelite woman was a woman of faith. Because the Lord's judgment was upon Israel for marrying pagan wives (Josh 23:12-13), Ezra demanded those Israelites who had transgressed this rule to divorce their wives (Ezra 9-10).
6. Under the new covenant, there does not seem to be any change in the expectation that Christians should marry Christians. Thus Paul explicitly states in 1 Corinthians 7:39 that a Christian widow, if she remarries, can only do so "in the Lord". Likewise the application of Paul's instructions about mixed partnerships, with its patent reference to the danger of mixed marriages under the old covenant, implies that Christians ought not to be mismatched with non-Christians (2 Cor 6:14). As O D Watkins states in his article on "Christian Marriage" in *The Prayer Book Dictionary* (1912), "The weight of Christian precedent is against sanctioning the solemnization of any marriage between a baptised person and a person unbaptised."<sup>4</sup>
7. Nonetheless, under the new covenant, the situation arises where an adult convert is already married to an unbeliever. In this case, Paul indicates that such a circumstance does not place the marriage of the Christian brother or sister in jeopardy. On the contrary, it may be the

<sup>2</sup> The form of this canon when first proposed bore no reference to any requirement that either party be baptised. Nothing in the proceedings of the General Synod gives any evidence of the reasons for this change and even the mover of the bill (Bishop D W B Robinson) was unable to recall the reason for its addition (from a private conversation during 2005).

<sup>3</sup> This episode in patriarchal history also indicates the shallowness of using circumcision as a bargaining chip for marriage between the sons of Jacob and the nations. It was not only deceitfully used by the sons of Jacob but also considered by the Hivites to be a matter of little consequence or conviction, but only a means to an end.

<sup>4</sup> The Roman Catholic position is similar. "An impediment known as DIFFERENCE OF WORSHIP, invalidates marriage contracted between a non-baptised person and one baptised." *The Teaching of the Catholic Church*, ed G D Smith (New York: Macmillan, 1964), II.1082.

opportunity for the unbelieving spouse to be saved (1 Cor 7:13; cf 1 Peter 3:1), although this is not to be understood as providing any justification for a Christian to marry a non-Christian. However, if the unbelieving partner wishes to separate, then the believing spouse is not bound (1 Cor 7:15).

8. It is surprising, therefore, that the General Synod condoned the solemnisation of marriage between two parties where only one was baptised. It is against the teaching of Scripture, against the tenor of the *Book of Common Prayer* and has no precedent in any canon law of the Church of England.<sup>5</sup>

### **Marriage between two unbelievers**

9. The possibility that marriage might be solemnised between two unbelievers in a church ceremony may seem at first an oddity. This raises the question of the relationship of the church to the world. Can the church pronounce a blessing upon two unbelievers? Is the institution of marriage, which at its deepest level reflects the union of Christ and the church something into which the unbeliever can enter? For those who consider marriage to be a sacrament,<sup>6</sup> the notion of participation in such a sacrament by unbelievers may be more problematic.<sup>7</sup>
10. Marriage was instituted for humankind as God's image bearers. It is an ordinance for all humanity, rather than a redemptive ordinance. While it has specific Christian application, the Prayer Book's understanding of marriage bears equal application to marriage outside the covenant community. This may be seen in the threefold "causes for which matrimony was ordained": the procreation of children; a remedy against sin so as to avoid fornication; and the companionship between a man and a woman. Throughout the Bible, these three aspects of marriage are recognised both within and without the Abrahamic community. Nowhere is the marriage of unbelievers

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<sup>5</sup> The revised canons of the Church of England make no mention of baptism as a requirement of either party to a marriage, or that lack of baptism would be an impediment, notwithstanding the inclusion of certain other impediments to the solemnisation of matrimony. See Canons B30-36.

<sup>6</sup> Albeit not a sacrament of the gospel, in accordance with Article XXV.

<sup>7</sup> Even John Macquarie, who argues for recognition of marriage as a sacrament, agrees that 'Marriage, of course, is a "natural" institution as well as being a Christian sacrament, and as a natural institution, it is a far wider phenomenon. Here we must recognize the continuity between the natural institution and the Christian sacrament...The so-called "natural" institution already contains *in nuce* that which is unfolded and understood in depth in the light of Christian revelation.' *Principles of Christian Theology* (London: SCM, 1966), 453-55. Some would go further, arguing that marriage, even in Genesis 1, bears a redemptive and therefore sacramental character.

regarded as of a different order than that between the members of the household of faith.<sup>8</sup> As Christopher Ash says:

The created order inheres precisely in all creation. It is not the preserve of any locality, any period of history or any culture. Nor is it applicable only to the people of God. This is important in view of the confusion surrounding the supposed difference between ‘marriage’ and ‘Christian marriage’. Marriage is an ordinance of creation not a regulation of the church; it may be entered outside the sphere of faith, and when entered from within the sphere of faith it does not change its essential character. Couples may have different levels of understanding of the purposes for which marriage was ordained, but those who know neither the creation origins nor the redemptive significance of marriage may yet marry. And when they marry, they marry; they do not partially marry because they are outside the boundaries of the church, and they do not marry in some superior way if they are within.<sup>9</sup>

Similarly, Emil Brunner writes of marriage and other orders of creation:

They are all independent of faith, and of love which flows from faith. They exist because of the psychophysical nature of man. Their nature and their existence are recognised by means of reason, not by faith, by means of the purely natural powers of cognition which is given to every man just because, and in so far as, he is a human being. In them the life of the community is achieved before faith comes upon the scene at all.<sup>10</sup>

11. Helmut Thielicke enunciates four points concerning what he calls the ‘worldliness’ of the estate of marriage

1. It is asserted that the estate of marriage is not constituted by the fact that it is entered into by persons who are aware of its theological implications and who therefore, since they know the Creator and Redeemer,

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<sup>8</sup> In fact it could be argued that an Egyptian Pharaoh (Gen 12:10-19) and Abimelech the King of Gerar (Gen 20:1-18) placed a higher value upon the marriage bond than even Abraham did.

<sup>9</sup> C Ash, *Marriage. Sex in the Service of God* (Leicester: IVP, 2003), 75.

<sup>10</sup> E. Brunner, *The Divine Imperative* (Butterworth, 1953), 335. Note Calvin’s comment on the seventh commandment: “Man has been created in this condition that he may not lead a solitary life, but may enjoy a helper joined to himself...therefore the Lord sufficiently provided for us in this matter when he established marriage, the fellowship of which, begun on his authority, he also sanctified by his blessing. From this it is clear that any other union apart from marriage is accursed in his sight.” *Institutes* 2.8.41.

know it also in its affinity to the order of creation and redemption.

2. It is asserted that marriage has no redemptive significance and that one is not 'saved' through it. We are not saved through an ordinance with which we are in conformity, but only through *faith*...
  3. It is asserted that as an order of creation marriage is an institution established for 'all men' and which can also be observed by 'all men', that is, independently of faith.
  4. And finally it is asserted that marriage is instituted as an order of preservation for 'the whole world'. In a way parallel to that in which for Luther the state constitutes the *social* basis for life and prevents the world from sinking into chaos, so marriage establishes the *biological* prerequisite for life. Both orders are required for the preservation of a world which is to be kept in being for its salvation, preserved for the chance of the day of salvation (*kairos*, 2 Cor 6:2). They do not themselves *mediate* salvation, but they do *preserve* for salvation. We are preserved because we must have the chance to be called.<sup>11</sup>
12. When Jesus addresses the question of divorce with the Pharisees in Matthew 19:3-9, he reminds them of the basic constitution of marriage and its foundation in creation. It is not Hebrew marriage, *per se*, but human marriage, to which Jesus draws our attention.<sup>12</sup> Moreover, those who conform to God's ordinance of marriage<sup>13</sup> are joined by God (Matt 19:6). As we have seen with Paul's instructions in 1 Corinthians, a recent convert who was previously married should continue to stay in the marriage, unless the unbeliever wishes a divorce. However, there is no suggestion that the marriage (originally between two unbelievers) is illegitimate or invalid. Unlike baptism and the Lord's Supper, which are redemptive ordinances for the people of

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<sup>11</sup> H Thielicke, *The Ethics of Sex* (ET London: James Clarke & Co., 1964), 139-140.

<sup>12</sup> "The ethical teaching of Jesus removes all limitations from the sphere of validity of divine law. In contrast to those who defined the people of God by nationality, Jesus' teaching is addressed to all men ('every one who...'). By referring back to Genesis and the creation narratives in his dialogue with the Pharisees on divorce, Jesus demonstrated that his teaching applies not just to Jewish (or Christian) marriage, but to human marriage in its totality." D Atkinson, *To Have and to Hold. The Marriage Covenant and the Discipline of Divorce* (London: Collins, 1979), 144.

<sup>13</sup> The ordinance of marriage presupposes the exclusive and permanent union of a man and a woman. See John Murray, *Principles of Conduct* (London: Tyndale, 1957), 45-81.

God, marriage is an ordinance for all who are made in the image of God. In the words of Oliver O'Donovan:

In the ordinance of marriage there was given an end for human relationships, a teleological structure which was a fact of creation and therefore not negotiable. The dimorphic organization of human sexuality, the particular attraction of two adults of the opposite sex and of different parents, the setting up of a home distinct from the parental home and the uniting of their lives in a shared life...these form a pattern of human fulfilment which serves the wider end of enabling procreation to occur in a context of affection and loyalty. Whatever happens in history, Christians have wished to say, this is what marriage really is. Particular cultures may have distorted it; individuals may fall short of it. It is to their cost in either case, for it reasserts itself as God's creative intention for human relationships on earth; and it will be with us, in one form or another, as our natural good until (but not after) the kingdom of God shall appear.<sup>14</sup>

## Conclusion

13. We live in a vastly different world from that of the sixteenth century. We can no longer proceed under the presumption that people seeking marriage are baptised. With the increase of civil celebrants and the majority of Australian marriages being registered without a minister of religion, it is surely time to reclaim the ordinance of marriage as an ordinance for all people, including those who are not yet baptised. It provides the opportunity for 'the church to speak to the world'.<sup>15</sup> The Christian church is best placed to speak of the meaning of marriage and the alignment between creation and redemption. As Jesus assures his hearers that it is God who joins two people in marriage, the Christian minister can pronounce God's blessing upon such a union, where it accords with God's intentions for human marriage. For God's blessing in creation, like the rain and the sunshine, is for the evil and the good, for the just and the unjust, that they might seek after God and find him.<sup>16</sup>
14. The current legislation in the Anglican Church of Australia requires a minister to ascertain whether one of the parties is baptised. If neither one is baptised, nor wants to be baptised, merely to conform to

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<sup>14</sup> O O'Donovan, *Resurrection and Moral Order: An Outline for Evangelical Ethics* (Leicester: IVP, 21994), 69.

<sup>15</sup> Ash, *Marriage*, 76.

<sup>16</sup> Matt 5:45; Acts 14:15-17; 17:26-27.

canonical correctness,<sup>17</sup> the minister cannot proceed. Yet one party could have been baptised as an infant and yet never personally professed Christ, never been confirmed and without any present association with the church, other than a desire for marriage in accordance with God's law. What justice is there in accepting such a person for marriage and denying one whose experience is identical, except that their parents did not bring them to baptism in their infancy? Surely even for those who consider marriage to be a sacrament, more than the evidence of baptism would be required to ensure that the sacrament had "a wholesome effect or operation".<sup>18</sup> Decisions as to whether such persons should be married in church are usually left in the hands of the minister. Yet there is no such liberty for a minister to exercise any discretion where neither party is baptised; no liberty to extend the blessing of God the Father to those outside the kingdom (Matt 5:45).

15. No doubt the intention of the General Synod in 1981 was to update the rules for marriage according to Anglican rites in the Australian context. It is understandable that there was a desire to see a relaxation of the expectation (though significantly not a previous requirement) for both persons to be baptised, though it is less clear why it was considered necessary that one party be baptised. After all, it is no longer a requirement that only baptised persons are eligible for a funeral service in accordance with Anglican rites. However, to go half way, requiring at least one of the parties to be baptised is an anomaly, if not a travesty of biblical teaching. In a day when less than half of all marriages are conducted as church ceremonies, it is hardly evangelistically enterprising or pastorally sensitive to insist that one party be baptised before a minister can accede to their request to be married. However, to receive the blessing of God in marriage does not require that both parties (let alone one party) be baptised. God desires that men and women live in the harmony of married relationships with all the benefits that such an estate conveys. If our Church is to engage effectively with unchurched Australians, we would do well to rejoice in the things we have in common with unbelievers; encourage them to get married in accordance with God's laws, and in so doing invite them to receive the blessing of God in a public ceremony. We are more likely to save our hearers by sharing with them the benefits

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<sup>17</sup> While it is a wonderful outcome for the parties to marriage to hear the gospel and be converted, it is another matter entirely to perform a perfunctory rite (in the mind of the recipient) in order to satisfy an ecclesiastical canon. Such a scenario is dangerously close to the deceptive requirement of circumcision for the Hivites, by the sons of Jacob, before any marriage with the daughters of Jacob could be contemplated (Gen 34:13-31).

<sup>18</sup> "And in such only as worthily receive the same [sacraments] they have a wholesome effect or operation: but they that receive them unworthily purchase to themselves damnation, as Saint *Paul* saith." Article xxv.



of being an image bearer, before we share with them the benefits of being a member of God's family. To insist upon the necessity of baptism before marriage is to put the cart before the horse.

### **Options**

16. If the General Synod is persuaded that the Solemnization of Matrimony Canon 1981 should be amended, two options present themselves: (1) to include a requirement that both parties must be baptised, or (2) to remove the requirement that either party has to be baptised.
17. Option (1) has the merit of seeking to make Christian marriage distinct from the marriage that is administered by a civil celebrant. However, it does not go far enough. For Christian marriage is a marriage between two professing Christians, baptised communicant members of Christ's body. If the couple are seeking God's blessing in accordance with the rites of the Anglican Church, should not both parties be communicant members of the Anglican Church? This would be theologically more consistent with the view that both parties should be baptised. Yet if we were to adopt such an amendment, a significant loss of contact with unchurched Australians would eventuate. We would be restricting our access to Australian society by refusing to marry other than our own.
18. Option (2) has the merit of reasserting marriage as an ordinance of God for all humanity and preserves the integrity of the estate of marriage in our society. It is mission-minded as it provides opportunity to bring people into a closer relationship with God, even if they are not ready to become disciples of Jesus in the pressured timetable between first interview and the date of the wedding. Furthermore, it leaves the decision in the hands of the minister as to the appropriateness of marrying two unbaptised persons in accordance with Anglican rites.
19. The Doctrine Commission discussed the merits of these options and agreed that option 2 was to be preferred. Accordingly, the Commission agreed that a bill which amended the Solemnization of Matrimony Canon 1981 by deleting paragraph 3(b) was worthy of consideration by the General Synod.

Glenn N. Davies

For and on behalf of the Doctrine Commission

7 February 2007

BILL 17 – EXPLANATORY MEMORANDUM

*Promoter: Bishop Glenn Davies*

*Contact: Bishop Glenn Davies*

## BILL 17

5                   **A BILL FOR THE SOLEMNIZATION OF MATRIMONY**  
                      **CANON 1981 AMENDMENT CANON 2010**  
                      **(PROVISIONAL CANON P01, 2007)**

**A canon to amend the Solemnization of Matrimony Canon 1981.**

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The General Synod prescribes as follows:

***Short Title***

- 15           1.   This Canon may be cited as the "Solemnization of Matrimony  
                  Amendment Canon 2010".

***Amendment of Section 3***

- 20           2.   Section 3 of the Solemnization of Matrimony Canon 1981 is amended  
                  by deleting subsection (b).
3.   The provisions of this canon affect the order and good government of  
                  this Church within a diocese and shall not come into force in any  
25           diocese unless and until the diocese by ordinance adopts it.

## BILL R06

### A RULE TO AMEND RULE II – RULES FOR THE APPOINTMENT OF A STANDING COMMITTEE OF GENERAL SYNOD AND DEFINING ITS POWERS AND DUTIES

#### EXPLANATORY MEMORANDUM

1. The Standing Committee is constituted by Rule II – to be found on page 385 of the 2007 edition of *The Constitution Canons and Rules of General Synod*.
2. The Rule attempts to provide for a body that is representative of the whole of the General Synod. The Rule recently (and perhaps for longer) has not provided a body which represents the whole of the General Synod. This can be illustrated by looking at the number of the representatives on the General Synod of the four largest dioceses represented at the 2007 session of the General Synod and the number of those representatives on the Standing Committee:

	General Synod	Standing Committee
Brisbane	20	3
Melbourne	36	7
Perth	18	1
Sydney	56	6

3. The position is worse as regards the smaller dioceses. There is no clerical or lay representative on the Standing Committee from Armidale, Ballarat, Bathurst, Bunbury, Newcastle, Northern Territory, North Queensland, North West Australia, Riverina, Rockhampton, The Murray or Wangaratta.
4. A totally equitable solution may be impossible. The bigger the Standing Committee then the greater the cost of meetings and the greater the possibility of the proceedings being less efficient than at present. Nevertheless, with some increase in episcopal, clerical and lay representation and some limitations, the present situation may be improved.

5. The solution suggested by the amendments is:
- (a) to increase the number of episcopal, clerical and lay representatives on the Standing Committee;
  - (b) to limit the number of representatives that the four larger dioceses may elect; and
  - (c) to ensure that there can be more representation for the other dioceses by limiting the representation each other diocese may have to a maximum of bishop, one clerical representative and one lay representative.

Hopefully the representation on the Stranding Committee will be more diverse than the limit described in (c) but that will be a matter for the representatives of the dioceses, excluding the 4 major dioceses, to determine.

6. The Secretaries of the Synod, in practice, are not needed as scribes and can be invited to meetings if required.
7. It is recommended that the new arrangement apply for a limited period only so that an assessment can be made at the next ordinary session of the General Synod when the present rule can be returned to or the amendments can be continued or further modified.

*Promoter: Diocese of Sydney*  
*Contact: Mr Neil Cameron*

## BILL R06

### 5           **A RULE TO AMEND RULE II – RULES FOR THE APPOINTMENT                   OF A STANDING COMMITTEE OF GENERAL SYNOD                   AND DEFINING ITS POWERS AND DUTIES**

10          Rule II is amended as follows:

1.    By the omission of the line in rule 2 which contains the following words: “The Secretaries for the time being of the Synod;”.
- 15    2.    By the substitution of “five” for “three” in the line in rule 2 which commences with the words “Three Bishops”.
- 20    3.    By the substitution of the following for the 2 lines in rule 2 which commence with the words “Nine members of the House of Clergy” and “Nine members of the House of Laity”:
  - “(a) One member of the House of Clergy elected by the clerical representatives of the diocese of Brisbane;
  - 25       (b) One member of the House of Laity elected by the lay representatives of the diocese of Brisbane;
  - (c) Two members of the House of Clergy elected by the clerical representatives of the diocese of Melbourne;
  - (d) Two member of the House of Laity elected by the lay representatives of the diocese of Melbourne;
  - 30       (e) One member of the House of Clergy elected by the clerical representatives of the diocese of Perth;
  - (f) One member of the House of Laity elected by the lay representatives of the diocese of Perth;
  - 35       (g) Three members of the House of Clergy elected by the clerical representatives of the diocese of Sydney;
  - (h) Three members of the House of Laity elected by the lay representatives of the diocese of Sydney;
  - 40       (i) Six members of the House of Clergy who are not clerical representatives of the dioceses of Brisbane, Melbourne, Sydney or Perth elected by the clerical representatives who are not clerical representatives of those four dioceses;
  - 45       (j) Six member of the House of Laity who are not lay representatives of the dioceses of Brisbane, Melbourne, Sydney or Perth elected by the lay

representatives who are not lay representatives of those four dioceses;

5                    Provided that in the case of elections pursuant to paragraphs (i) and (j), no more than one clerical representative and one lay representative of any one diocese is entitled to be elected."

10                  4.    By substituting the following for the first paragraph in rule 3:

                     "If between sessions of Synod, a vacancy arises among the members elected by the House of Bishops, that is to say by death, resignation in writing to the Primate or upon becoming a non-elected member of the Standing Committee, the vacancy shall be filled by election of the Standing Committee.

20                   If between sessions of Synod, a vacancy arises among the members elected by the clerical or lay representatives of the diocese of Brisbane, Melbourne, Sydney or Perth, that is to say by death or resignation in writing to the relevant diocesan bishop or upon becoming a non-elected member of the Standing Committee, the vacancy may be filled by the relevant diocesan council or synod of the diocese.

30                   If between sessions of Synod, a vacancy arises among the members elected by the clerical representatives under paragraph (i) of rule 2, that is to say by death or resignation in writing to the Primate or upon becoming a non-elected member of the Standing Committee, the vacancy may be filled by election of the members of the Standing Committee in the House of Clergy.

35                   If between sessions of Synod, a vacancy arises among the members elected by the lay representatives under paragraph (j) of rule 2, that is to say by death or resignation in writing to the Primate or upon becoming a non-elected member of the Standing Committee, the vacancy may be filled by election of the members of the Standing Committee in the House of Laity."

45                  5.    By deleting in the second paragraph in rule 3 the words "or a Secretary of Synod".

                     These amendments apply until the first day of the next ordinary session of the Synod.

## **BILL 18**

### **A BILL FOR THE CONSTITUTION AMENDMENT (SECTION 30) CANON 2010**

#### **EXPLANATORY MEMORANDUM**

1. Paragraph (a) of Section 30 of the Constitution provides that a canon which affects the ritual, ceremonial or discipline of the church is deemed to affect the order and good government of the church within each diocese and has no effect unless and until the synod of the diocese adopts the canon by ordinance.
2. Paragraph (b) of Section 30 of the Constitution provides that, if the General Synod declares that the provisions of a canon affect the order and good government of the church within a diocese or the church trust property of a diocese, the canon will not come into force in any diocese unless and until the synod of the diocese adopts the canon by ordinance.
3. Paragraph (c) of section 30 of the Constitution provides that, if the synod of a diocese or a diocesan council declares its opinion that the provisions of a canon affect the order and good government of the church within the diocese, the opinion is to be referred to the Standing Committee of the General Synod. If the Standing Committee does not agree with the opinion, the issue goes to the Appellate Tribunal for determination.
4. Initially, the Standing Committee adopted the practice of accepting the opinion of the Diocesan Synods and Diocesan Councils. There does not seem to have been any such reference to the Appellate Tribunal under section 30 until recent times. In recent times, the Standing Committee has departed from that practice and has taken to rejecting the opinion of the Diocesan Synods and Diocesan Councils.
5. Further, the Appellate Tribunal has adopted a very restrictive view of what has to happen before one can conclude that the order and good government of a diocese is affected by a canon.
6. The amendment, if adopted, will make the decision of each Diocesan Synod conclusive. That opinion will not be subject to review by the Standing Committee or the Appellate Tribunal. It is submitted that



Diocesan Synods and Diocesan Councils are in a much better position to determine what affects the order and good government of the diocese and the church trust property of the diocese than either the Standing Committee or the Appellate Tribunal.

7. To take effect the canon will need to be passed by the General Synod and then receive the assent of 75% of the Diocesan Synods including the Synods of all Metropolitan Dioceses.

*Promoter:*        *Diocese of Sydney*

*Contact:*        *Mr Neil Cameron*

## BILL 18

5

### A BILL FOR THE CONSTITUTION AMENDMENT (SECTION 30) CANON 2010

10

The General Synod prescribes as follows:

#### **Title**

1. This Canon may be cited as "Constitution Amendment (Section 30) Canon 2010".

15

#### **Amendment to section 30**

2. Section 30 is amended as follows:

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- (a) by the substitution of the following for all of the words in paragraph (a):

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"Where the General Synod does not make a declaration under paragraph (b) of this section in relation to a canon, and the synod of a diocese (or the diocesan council thereof) declares that the canon affects:

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- (i) the ritual, ceremonial or discipline of this Church within such diocese; or
      - (ii) the order and good government of the Church within such diocese, or
      - (iii) the church trust property of such diocese,
- such canon shall not come into force in such diocese unless and until the diocese, by ordinance of its synod adopts the said canon."; and

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- (b) by the omission of paragraph (c).

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We certify that this bill was passed by the General Synod of The Anglican Church of Australia this                      day of      2010.

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## **BILL 19**

### **A BILL FOR THE CONSTITUTION AMENDMENT (SECTION 32) CANON 2010**

#### **EXPLANATORY MEMORANDUM**

1. The purpose of this bill is to ensure that the power of the Synod to impose a financial liability on a diocese without its assent under Section 32 of the Constitution is limited to the costs, charges and expenses necessary to maintain the machinery of the Constitution.
2. Section 32 provides for the only basis under the Constitution by which the Synod may by canon or rule impose a financial liability on a diocese. By subsection (3), the Synod may impose a financial liability on a diocese in respect of any matter if the diocese has by ordinance assented to incur such liability. However the Synod may impose on a diocese a financial liability without its assent in respect of the matters listed in subsection (2). These are as follows:
  - “(a) The carrying into effect of this Constitution;
  - (b) The holding of synod and the conduct of its business;
  - (b1) The implementation of and giving effect to any canon rule or resolution of Synod;
  - (c) The meetings and the conduct of the affairs of the Standing Committee and any other committee, board or commission established by Synod;
  - (d) The sittings of the Appellate Tribunal to hear and determine any appeal question or matter made or referred to it and the sittings of the Special Tribunal to hear and determine any charge brought before it;
  - (e) The maintenance of the registry of the Primate, and primatial travelling expenses;
  - (f) The election or appointment of the corporate trustees and the administration of the affairs of the body corporate.”
3. Subject to two exceptions, the matters listed in subsection (2) comprise costs, charges and expenses which are necessary to maintain the machinery of the Constitution. This is reflected in

paragraph (a) which provides for a general head of expense recovery in connection with “the carrying into effect of this Constitution.

4. The first exception is paragraph (b1). This paragraph enables the Synod to impose a financial liability on a diocese in respect of canons, rules and resolutions of the Synod which are not necessary to maintain the machinery of the Constitution and in respect of which a diocese might object.
5. The second exception relates to that part of paragraph (c) which permits an imposition of a financial liability on a diocese in respect to the meetings and conduct of “any other committee, board or commission established by Synod”. While it is reasonable for a diocese to make contribution toward the costs associated with bodies established by the Constitution itself (see paragraphs ((b), (d) and (f) of Section 32(2)), it is unreasonable to impose a financial liability on a diocese in respect of a body which is established by canon of the Synod and in respect of which the diocese might object. An example of one such body is the Episcopal Standards Commission.
6. Any imposition of a financial liability on a diocese without its assent should, as a matter of principle, be limited to matters which are necessary to maintain the machinery of the Constitution. Accordingly the bill proposes the deletion of paragraph (b1) of Section 32(2) and an amendment to paragraph (c) of Section 32(2) which would confine its scope to the Standing Committee.
7. A financial liability in connection with any other matter should, as a matter of principle, be incurred by a diocese only with its assent under the provisions in Section 32(3).
8. This bill will become a canon duly made if it is passed by a vote of at least two-thirds of the members of each house and it has been assented to by a majority of all dioceses of which two at least shall be metropolitan sees.

*Promoter:*        *Diocese of Sydney*  
*Contact:*        *Mr Robert Tong*

## BILL 19

### 5                                    **A BILL FOR THE CONSTITUTION AMENDMENT (SECTION 32) CANON 2010**

The General Synod prescribes as follows:

10

#### **Title**

1     This Canon may be cited as the “Constitution Amendment (Section  
32) Canon 2010.”

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#### **Amendment to Section 32**

2     Section 32 of the Constitution is amended as follows:

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(a)   by deleting paragraph (b1) in subsection (2), and

(b)   by deleting in paragraph (c) of subsection (2) the words “and  
any other committee, board or commission established by  
Synod”, and

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(c)   by deleting in the proviso to subsection (2) the matter “(b1),”.

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We certify that this bill was passed by the General Synod of The Anglican  
Church of Australia this                                    day of                                    2010.

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## **BILL 20**

### **A BILL FOR THE CONSTITUTION AMENDMENT (SECTION 63(1)) CANON 2010**

#### **EXPLANATORY MEMORANDUM**

1. The bill initiates the repeal of Section 63(1) of the Constitution. The effect of Section 63(2) is preserved. To take effect:
  - (a) the bill must be made a canon by the General Synod;
  - (b) 75% of all diocesan synods must assent to the canon. This majority must include the synods of the 5 metropolitan sees; and
  - (c) the assents must be in force at the same time.
2. The repeal will operate prospectively; it will not affect opinions given in the past.
3. Opinions given by the Tribunal under section 63(1) are of no legal effect. The Act by which the Constitution was given force in NSW gave very limited force to the Constitution only and, of the things that can be done pursuant to the Act, limited force was given to canons and rules only. There is no mention in the relevant section to determinations or opinions of the Appellate Tribunal.
4. Further, the determinations and opinions of the Appellate Tribunal cannot be enforced by the tribunal. The Constitution gives no power to the tribunal to enforce its determinations or opinions.
5. An opinion can be ignored.
6. The most noticeable example of the standing of the opinions is the decision of the Court of Appeal in *Scandrett v Dowling*. The court ignored all of the numerous opinions given by the Appellate Tribunal in or in connection with the women's ordination issue. Without expressly saying so, the Court treated the opinions as irrelevant to the legal issue and decided the issue on a basis not considered by the tribunal.
7. The section of the Constitution intended to provide a mechanism to resolve difficult legislative issues is section 29. No reference has been made pursuant to that section in living memory. The section

envisages that the General Synod will make or think of making a canon, rule or resolution. It enables the standing of the canon rule or resolution or a proposed canon, rule or resolution to be referred to the Appellate Tribunal. In other words, the tribunal is not required to consider some abstract issue, but a canon, rule or resolution made or proposed to be made. The determination or opinion, if in order, then takes its effect from the provisions of the section.

8. The tribunal has no alternative under section 63(1) but to consider the questions put to it, unless the questions are outside the ambit of the words in the Section. The tribunal has no power under section 63(1) to pose questions to itself.
9. Section 63(1) is an unnecessary duplication to Section 29. It may have been important before Section 29 was extensively redrawn in 1987 and 1992; it is not needed now.

*Promoter:*        *Diocese of Sydney*  
*Contact:*        *Mr Neil Cameron*

## BILL 20

5

### **A BILL FOR THE CONSTITUTION AMENDMENT (SECTION 63(1)) CANON 2010**

10

The General Synod prescribes as follows:

#### **Title**

1. This Canon may be cited as “Constitution Amendment (Section 63(1)) Canon 2010”.

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#### **Amendment to section 63**

2. Section 63(1) is amended by the substitution of the following for all the matter in the section:

20

“Wherever a question arises under this Constitution before the Appellate Tribunal, the tribunal may direct that any synod person or class of persons or association claiming to be interested in the question shall be notified of the hearing and be entitled to appear or be represented thereat.”

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30

We certify that this bill was passed by the General Synod of The Anglican Church of Australia this                      day of                      2010.

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## **BILL 21**

### **A BILL FOR THE SPECIAL TRIBUNAL CANON 2007 AMENDMENT CANON 2010**

#### **EXPLANATORY MEMORANDUM**

1. The Special Tribunal Canon 2007 (amongst other things) establishes the Episcopal Standards Commission (the "ESC"), purports to confer powers on the ESC, and authorizes the ESC to prosecute delinquent diocesan bishops in the Special Tribunal. The canon also allows the Synod of a diocese to exclude the power of the ESC to prosecute the bishop of the diocese. However, this leaves open the question as to whether it is still possible for the ESC to exercise the powers in the Canon when it cannot use the information resulting from the exercise of those powers to prosecute a diocesan bishop. For present purposes, it is assumed that it can.
2. The ESC has additional powers under the Episcopal Standards Canon 2007 but these are only available in relation to a diocese where the synod of the diocese has adopted that canon.
3. The purpose of this canon is to clarify the position by making it clear that the ESC can use the powers which may (or may not) be conferred on it by the Special Tribunal Canon 2007 where the Synod of Diocese has not excluded the ESC's power to prosecute its bishop.
4. The amendment also assists those who have a legitimate complaint against the bishop of a diocese which has excluded the prosecuting power of the ESC by referring them to someone who ought to be prosecuting their complaint if that course of action is appropriate.
5. The bill preserves the right of diocesan synods to determine what course is appropriate to their circumstances. Thus:
  - (a) The synod of a diocese in which the Special Tribunal Canon 2007 is in force, can decide to allow the ESC to prosecute its bishop should the circumstances make that appropriate.
  - (b) The synod of a diocese in which the Special Tribunal Canon 2007 is in force, can decide to allow the ESC to investigate the behaviour of its bishop but require that the ESC not prosecute. It would then not adopt this amendment and another diocesan

bishop or person appointed by the synod may prosecute using the information obtained by the ESC.

- 5           (c) The synod of a diocese in which the Special Tribunal Canon 2007 is in force, may determine that the ESC shall not exercise the powers conferred on it by that Canon in that Diocese. It can do this only if it has denied the ESC the right to prosecute its bishop and adopts this amendment.

10           *Promoter:     Diocese of Sydney*  
              *Contact:     Mr Neil Cameron*

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The General Synod prescribes as follows:

# Title

1. This Canon may be cited as “Special Tribunal Canon 2007 Amendment Canon 2010”.

## Amendments

2. The Special Tribunal Canon 2007 is amended by the insertion of the following definition in section 2 after the definition of “respondent”:

“Subsection 43(2) Exclusion’ means an ordinance made by the synod of a diocese under subsection 43(2) which:

- (a) declares that paragraph (a) of subsection 43(1) shall have no effect in respect of the Bishop of that diocese; and
- (b) has not been revoked by that synod.”

3. The Special Tribunal Canon 2007 is further amended by the insertion of the following immediately after section 2:

“2A (1) The ESC has no powers or duties under this canon, apart from the duty imposed by subsection (2), in relation to a diocese or the Bishop thereof while there is a Subsection 43(2) Exclusion in effect in relation to that diocese.

- (2) If the ESC receives a complaint in relation to the Bishop of a diocese while there is a Subsection 43(2) Exclusion in effect in relation to that diocese, the ESC must refer the complainant and the complaint:
  - (a) where the diocese is part of a province and the complaint is not in respect of the Metropolitan of that province, to the Metropolitan of that province;

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- (b) where the diocese is part of a province and the complaint is in respect of the Metropolitan of that province, to the Metropolitan of another province; and
  - (c) where the diocese is not part of a province and the complaint is in respect of the Bishop of that diocese, to a Metropolitan."

10      **Order and Good Government**

4.      This canon has no effect in a diocese in which the Special Tribunal Canon 2007 is not in force.
- 15      5.      The provisions of this canon affect the order and good government of the Church within a diocese and shall not come into force in a diocese unless and until the canon is adopted by ordinance of the synod of the diocese.

20      We certify that this bill was passed by the General Synod of The Anglican Church of Australia this                      day of      2010

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