

CHURCH LAW COMMISSION

1. Constitution of the Commission

The Commission is an expert Reference Commission established under Strategic Issues, Commissions, Task Forces and Networks Canon 1998. Its functions are:

- (a) to examine questions of Church law referred to it by the Primate, the Standing Committee or the General Synod, and to report thereon to the referring party and the Standing Committee;
- (b) to make recommendations to the Standing Committee on matters of church law which are of importance to this church.

Since General Synod 2004 the Commission has comprised:

The Honourable Justice D.J. Bleby (Adelaide), Chair
Mr W.G.S. Anderssen (Brisbane)
Ms R.M. Armstrong AO QC (Melbourne)
His Honour Judge Grant Britton SC (Rockhampton)
Mr Richard Dennis (Adelaide)
The Reverend James McPherson (Sydney)
Mr Mark Payne (Sydney)
Mr Eric Ross-Adjie (Perth)
Mr R Tong (Sydney)
Mr I.B. Walker (Brisbane)
The Honourable Mr Justice P.W. Young (Sydney)

The term of office of all members of the Commission will expire in April 2008.

At the time of writing this report the Commission has met four times since the last General Synod and is likely to have met on one additional occasion before October 2007. The General Secretary has attended the whole or part of all meetings of the Commission except one.

2. Matters engaging the major attention of the Commission

Most of the work done by the Commission is reflected in Bills for Canons and motions for amendment to Rules, together with their respective explanatory memoranda, coming before this session of the General Synod at the request of the Standing Committee. The Commission has also been responsible for compiling the report of the Standing Committee on each of the Canons provisionally passed in 2004 (See Book 3a). In addition, in relation to the Provisional Episcopal Standards Canon (Canon P4 of 2004) it prepared and published a response to the report of the Victorian Provincial Legal Committee.

It is not intended in this report to refer further to that body of legislation.

3. Bill for a Constitution Amendment (Amending Canons) Canon

This Bill was not reached at the 2004 General Synod. At the request of General Synod it was circulated to dioceses for comment before this session of General Synod.

The Bill had been promoted by the Church Law Commission in an attempt to resolve difficulties and anomalies with s 30 of the Constitution, and the uncertain effect of amending Canons of General Synod which had required adoption by ordinance of diocesan synods.

A subcommittee of the Diocese of Sydney Standing Committee informed the Commission that it could not recommend assent of the Diocese of Sydney to the Canon if it were passed. The consequence would be that the amendment to the Constitution could not take effect.

The Commission prepared a discussion paper, and is of the view that, without reference of a question to the Appellate Tribunal which might clarify the present position, no amendment to s 30 of the Constitution could be drafted which would resolve the difficulty and anomaly which is likely to gain the necessary support of all metropolitan dioceses in a way which is consistent with the present general scheme of s 30. It believes that more radical revision of the Constitution is necessary which must involve a general doctrinal and governmental approach which considers the nature of the Church in the 21st Century. Consideration should be given to a form of constitution which reflects that nature. The Constitution is not serving the Church with a mechanism which allows a satisfactory law-making process in relation to Canons or ordinances of a doctrinal nature.

4. General Synod 2004 – Question No.17

This question asked:

“Can a mechanism be found to encourage the participation of members of General Synod who are lawyers at the drafting stages of Bills in the hope of reducing the need for an exhaustive and exhausting series of amendments having to be considered by General Synod?”

The Commission considered the question and identified a number of reasons why there were so many amendments presented on the floor of Synod in 2004. One reason was the absence of a meeting of the Church Law Commission shortly before the 2004 Synod to deal with such problems. Another was that diocesan representatives to General Synod generally do not meet until shortly before General Synod, when a particular concern about legislation may be aired for the first time. While there is a perception that it is lawyers which produced the last minute amendments, in most cases these arose out of discussions within diocesan representatives, the lawyers having been appointed spokespersons for those meetings.

Members of Synod will be aware that for some time now there have been in place provisions of the Standing Orders designed to ensure that amendments are identified as early as possible, and are discussed with the mover with a view to avoiding unnecessary debate on the floor of Synod.

However, the Commission considered that the handling of amendments could be facilitated by more attention to programming of the agenda, briefing of the President, provision of a Chancellor or legal assistant for the President so that the Chair and Deputy Chair of Committees are better able to attend to legislation, greater use of “huddles”, and at least one extra meeting of the Church Law Commission before Bills are printed. All members of Synod are strongly urged to communicate any concerns over proposed legislation to the mover and the Church Law Commission as early as possible.

One of the recommendations arising out of this discussion was a recommendation of a majority of the Commission for the appointment of a Primate’s Chancellor, a recommendation which was also independently made by the working group appointed to consider changes to the Primate Canon.

5. Consecration of the Reverend D. E. Chislett

The Commission had a number of questions arising out of this consecration referred to it by the Acting Primate. For various reasons it was not possible to provide a timely answer to all the questions, and further consideration revealed great difficulty in providing answers to questions cast in theoretical terms. The Commission reported that it was unable to answer the questions as then framed without reference to specific facts, relevant diocesan legislation and the terms of any relevant licence referred to in some of the questions. The Commission was not asked to pursue the matter further.

In view of possible proceedings arising out of the consecration and associated matters, the members of the Appellate Tribunal on the Commission did not participate in discussion.

**6. Constitution Amendment (Relations with other Churches)
Canon 2004**

The Commission advised the Standing Committee as to the effect of this Canon, if the amendment to the Constitution became effective, on relations with other churches in respect of which this Synod had previously passed resolutions declaring the Anglican Church of Australia to be in Communion.

When it became apparent that the Canon would not be assented to by the Dioceses of Adelaide or Brisbane, the Commission reported to Standing Committee that the difficulties, as the Commission understood them, represented substantial differences in philosophy and a possible reflection of difficulties facing the Anglican Communion. The Commission considered that any further move to resolve the difficulties in 2007 would not be successful, and it suggested that no further action be taken at this stage. The subject matter of the Canon will, however, have to be reconsidered when it becomes a live issue in the context of developing covenants with other churches.

7. Professional Standards

The Commission has continued to consult with and to be consulted by the Professional Standards Commission as to suggested amendments to the Model Professional Standards Ordinance before recommendations for amendment came before the Standing Committee. It has also advised the Professional Standards Commission as to proposed amendments to the National Register Canon 2004.

8. Other Matters

Due to pressure of other business, the Commission has been unable to make progress with updating its paper published in 2003 concerning status of Anglican Clergy. Another outstanding item which it has not been able to progress relates to the licensing of clergy.

The Commission has also given advice on other matters from time to time as questions have arisen.

**The Honourable Justice D.J. Bleby
Chair, Church Law Commission**

April 2007