

APPELLATE TRIBUNAL CANON 1981¹

Canon 12, 1981 as amended by
Canon 17, 1981
Canon 1, 1992
Canon 3, 1998
Canon 5, 2010²
Canon 1, 2017
Canon 3, 2017

A canon to repeal the Appellate Tribunal Canon 1962 and to provide for the appointment of members to the Appellate Tribunal.

The General Synod prescribes as follows:

1. This canon may be cited as the "Appellate Tribunal Canon 1981".
2. The Appellate Tribunal Canon 1962 is repealed and the seats of all members of the Appellate Tribunal are declared vacant.
3.
 - (1) Synod on the nomination of the House of Bishops appoints the persons named in the First Part of the Schedule to be members of the Appellate Tribunal;
 - (2) Synod on the nomination of the House of Clergy appoints the persons named in the Second Part of the Schedule to be members of the Appellate Tribunal; and
 - (3) Synod on the nomination of the House of Laity appoints the persons named in the Third Part of the Schedule to be members of the Appellate Tribunal.
- 3A.³ The Primate is disqualified from becoming a member of the Appellate Tribunal.
- 4.⁴ The office of a member of the Appellate Tribunal is vacated at the commencement of the ordinary session of Synod that next occurs after the member has attained the age of 75 years or when the member –
 - (a) dies;
 - (b) resigns;
 - (c) is declared by any competent Court incapable of managing his or her affairs;
 - (d) ceases to reside permanently in Australia;

¹ Pursuant to Canon 3, 1998, Section 1(2) the Canon as amended may be cited as the "Appellate Tribunal Canon 1981-1998".

² Repealed by Canon 3, 2017.

³ Added by Canon 1, 2017.

⁴ Replaced by Canon 1, 2017.

- (e) is convicted by any Court of any offence punishable by imprisonment;
 - (f) being a bishop, ceases to be a diocesan bishop; or
 - (g) becomes the Primate.
- 4A.⁵ (1) If the seat of any member of the tribunal is or becomes vacant while Synod is in session then the members of the house which nominated the member whose seat on the tribunal has become vacant shall at that session nominate a person to fill the vacancy.
- (2) Any rule relating to the election of a person to any office by the house concerned shall apply *mutatis mutandis* to the nomination of a person pursuant to this section.
- (3) A person nominated to fill a vacancy in accordance with this section shall by virtue of this canon become a member of the tribunal.
- 4AB⁶ (1) Despite section 4, if the office of a member of the Appellate Tribunal has become vacant only because the person who was that member –
- (a) has attained the age of 75 years,
 - (b) being a bishop has ceased to be a diocesan bishop, or
 - (c) has become the Primate –
- and at the time of the office becoming vacant the member is participating in the disposition of an appeal, question or matter (to an extent greater than participating in directions hearing or other procedural steps) that person remains a member of the Appellate Tribunal for the purposes only of participating in and concluding that appeal, question or matter.
- (2) Sub-section (1) does not affect the operation of section 4.
- (3) Despite section 7C, if –
- (a) the place of a member of the Appellate Tribunal has been taken by another person under section 7B(2),
 - (b) that other person 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; and
 - (c) the appeal, question or matter has not been disposed of at a time when, but for this sub-section, the person would cease to be eligible to participate in the disposition of that appeal, question or matter because of the commencement of the next ordinary session of Synod or because that other person –

⁵ Added by Canon 1, 1992.

⁶ Replaced by Canon 3, 2017.

- (i) has attained the age of 75 years,
- (ii) being a bishop has ceased to be a diocesan bishop, or
- (iii) has become the Primate –

that other person remains eligible to participate in and conclude that appeal, question or matter.

- 5.7 If the seat of any member of the Appellate Tribunal becomes vacant while Synod is not in session and it becomes necessary or desirable for the vacancy to be filled before the next ordinary session of Synod the Primate shall cause the General Secretary to notify the members of the house which nominated the member whose seat on the Tribunal has become vacant that such vacancy is to be filled, to invite the submission of names of candidates for nomination by the house and to notify them of the date fixed by the Primate, being a date not less than six weeks after posting such notification by which such names should be submitted. If no more names are received than the number of vacant seats to be filled the General Secretary shall declare the persons named to be persons nominated by the house concerned for appointment to the Tribunal, otherwise he or she shall conduct a postal or other ballot among the members of the house concerned to determine the persons nominated by such house for appointment as aforesaid, such ballot to be conducted in accordance with the rules for the time being in force for the conduct of ballots with such modifications as are necessary and the General Secretary shall declare the persons who are successful in such ballot to be persons nominated by the house concerned for appointment to the Tribunal. Upon the Secretary declaring a person to be nominated for appointment as aforesaid the person shall become a member of the Tribunal.
6. Any bishop who vacates office upon ceasing to be a diocesan bishop having accepted appointment to the office of diocesan bishop of another diocese, shall, on installation as bishop of that other diocese, be automatically reappointed as a member of the Tribunal.
7. Any vacancy not filled pursuant to sections 5 and 6 shall be filled at the next ordinary session of Synod by the appointment by the Synod of a qualified person nominated by the house which nominated the member whose seat has become vacant.
- 7A.⁸ (1) At each ordinary Session there is to be elected to an Appellate Tribunal Reserve List by the General Synod voting together and not by houses –
- (a) two diocesan bishops; and
 - (b) two members of the laity qualified to be lay members of the Appellate Tribunal.
- (2) One diocesan bishop on the Appellate Tribunal Reserve List is the first reserve diocesan bishop and the other is the second reserve diocesan bishop determined by agreement between them or, in the absence of agreement, by lot.

⁷ Amended by Canon 1, 2017.

⁸ Added by Canon 3, 2017.

- (3) One member of the laity on the Appellate Tribunal Reserve List is the first reserve lay member and the other is the second reserve lay member determined by agreement between them or, in the absence of agreement, by lot.
- 7B.⁹ (1) This section applies if, before the Appellate Tribunal commences to dispose of an appeal, question or matter (to an extent greater than conducting directions hearings or other procedural steps) made or referred to the Appellate Tribunal, a member of the Appellate Tribunal –
- (a) has vacated office as a member by virtue of section 4;
 - (b) is unavailable to participate in the hearing of a matter due to an apprehension of bias or a conflict of interest;
 - (c) in relation to a matter that involves or may involve the exercise of discipline within a diocese, is the diocesan bishop of that diocese;
 - (d) declares that he or she is unavailable to participate in the hearing of a matter for any reason; or
 - (e) is or becomes temporarily incapable of acting.
- (2) If this section applies, the member may not have any further part in hearing or disposing of that appeal, question or matter, and the place of that member on the Appellate Tribunal in relation to that appeal, question or matter is to be taken –
- (a) if the member is or was a bishop –
 - (i) by the first reserve diocesan bishop; or
 - (ii) where if the first reserve diocesan bishop were a member of the Appellate Tribunal this section would apply in respect of that bishop, by the second reserve diocesan bishop; and
 - (b) if the member is or was a member of the laity –
 - (i) by the first reserve lay member; or
 - (ii) where if the first reserve lay member were a member of the Appellate Tribunal this section would apply in respect of that lay member, by the second reserve lay member.

7C.¹⁰ A person ceases to be a member of the Appellate Tribunal Reserve List at the commencement of the next ordinary session of Synod or when the person –

- (a) dies;
- (b) resigns;
- (c) is declared by any competent Court incapable of managing his or her affairs;
- (d) ceases to reside permanently in Australia;
- (e) is convicted by any Court of any offence punishable by imprisonment;
- (f) being a bishop, ceases to be a diocesan bishop; or
- (g) becomes the Primate.

8. The House of Bishops may make regulations prescribing the manner in which the President and the Deputy President of the Appellate Tribunal shall be chosen.

9. The Appellate Tribunal shall publish the reasons for the decision in relation to every determination hearing opinion or reference heard by it.

10.¹¹ The following courts are specified for the purpose of section 57 of the Constitution:

The Federal Court of Australia
The Family Court of Australia
The Family Court of Western Australia
The District Court or County Court of any State of Australia.

11.¹² In this canon, Primate means the person who holds the office of Primate under the Primate Canon 1995 and does not include the Acting Primate.

12.¹³ This canon is not a canon referred to in the first sentence of section 57(3) of the Constitution.

¹⁰ Added by Canon 3, 2017.

¹¹ Added by Canon 3, 1998.

¹² Added by Canon 1, 2017.

¹³ Added by Canon 3, 2017.

THE SCHEDULE ¹⁴

First Part

The Bishop of Canberra and Goulburn, the Right Reverend C. A. Warren
Mr. K. R. Handley, Q.C.

Second Part

The Archbishop of Adelaide, the Most Reverend K. Rayner
Mr. Justice Cox

Third Part

The Bishop of Newcastle, the Right Reverend A. C. Holland
Mr. Justice Tadgell
Mr. P. W. Young, Q. C.

NOTE

The following changes in the membership of the Appellate Tribunal have occurred since 1981 -

First Part [Nominated by House of Bishops]

- 1985 The Archbishop of Sydney, the Most Reverend D. W. B. Robinson, was appointed in the place of the Right Reverend C. A. Warren.
- 1992 The Archbishop of Adelaide, the Most Reverend I. G. C. George, was appointed in the place of the Most Reverend D. W. B. Robinson.
- 2004 The Archbishop of Brisbane, the Most Reverend P. J. Aspinall, was appointed in the place of the Right Reverend I. G. C. George.
- 2004 Mr M Horton, OAM was appointed in the place of the Honourable K. R. Handley.
- 2014 The Honourable C Croft was appointed in the place of Mr M Horton, OAM.
- 2023 The Bishop of Gippsland, the Right Reverend R Treloar was appointed in the place of the Most Reverend P.J. Aspinall.

Second Part [Nominated by House of Clergy]

- 1992 The Bishop of Bathurst, the Right Reverend B. W. Wilson, was appointed in the place of the Most Reverend K. Rayner.
- 1995 Mr D. J. Bleby, Q.C., was appointed in the place of Justice Cox.
- 2001 The Bishop of Armidale, the Right Reverend P. R. Brain, was appointed in the place of the Right Reverend B. W. Wilson.
- 2010 The Honourable R. C. Refshauge was appointed in the place of the Honourable D. J. Bleby.
- 2013 The Bishop of Wangaratta, the Right Reverend A. J. Parkes AM was appointed in the place of the Right Reverend P. R. Brain.
- 2022 The Archbishop of Sydney, the Most Reverend K. Raffel, was appointed in the place of the Right Reverend A. J. Parkes AM.

Third Part [Nominated by House of Laity]

- 1992 The Bishop of Armidale, the Right Reverend P. Chiswell, was appointed in the place of the Right Reverend A. C. Holland.
- 2000 The Bishop of North West Australia, the Right Reverend A. H. Nichols, was appointed in the place of the Right Reverend P. Chiswell.
- 2003 The Bishop of Newcastle, the Right Reverend R. A. Herft, was appointed in the place of the Right Reverend A. H. Nicholls.
- 2004 The Honourable K. Mason was appointed in the place of the Honourable R. C. Tadgell.
- 2010 Ms G. Davidson was appointed in the place of the Honourable P. W. Young, AO.
- 2016 The Bishop of Ballarat, the Right Reverend G. J. Weatherill, was appointed in the place of the Most Reverend R. A. Herft.
- 2022 Justice D. Mullins AO was appointed in the place of the Honourable K. Mason AC.
- 2022 Justice M. Meek was appointed in the place of Ms G. Davidson.