



General Synod - Bishop (Incapacity) Canon 1995 Adopting Ordinance 1999

No 38, 1999

An Ordinance to adopt Canon Nos 18, 1995 and 1, 1998 of the General Synod of the Anglican Church of Australia.

The Synod of the Diocese of Sydney Ordains -

1. Name of Ordinance

This Ordinance is the General Synod - Bishop (Incapacity) Canon 1995 Adopting Ordinance 1999.

2. Adoption of Canons No 18, 1995 and No 1, 1998

The following canons of the General Synod of the Anglican Church of Australia are adopted -

- (a) Canon No 18, 1995, the text of which is set out in the First Schedule; and
- (b) Canon No 1, 1998, the text of which is set out in the Second Schedule.

First Schedule

A Canon to provide for the vacation of the See of a bishop incapable of fulfilling office and for other purposes.

The General Synod prescribes as follows -

Short title

1. This canon may be cited as the "Bishop (Incapacity) Canon 1995".

Definitions

2 In this canon -

"incapable", in relation to a person who is the bishop of a diocese, means -

- (a) incapable, continuously or intermittently, of managing the person's affairs ; or
- (b) by reason of a physical or mental disability of any kind, unable, continuously or intermittently, to make reasonable judgments in respect of matters relating to all or any part of the carrying out of the person's affairs or the affairs of the person's office as the bishop of the diocese;

"registrar", in relation to a diocese, means the person holding office as the chief executive officer (by whatever name called) of the registry of the bishop of the diocese, and includes a person acting in such an office;

"relevant Metropolitan", in relation to the bishop of a diocese, means -

- (a) unless paragraph (c) or (d) applies, the Metropolitan of the Province in which the diocese is situated; or

(b) if the diocese is an extra provincial diocese, the Primate; or

(c) if the bishop is the Metropolitan but not the Primate, the Primate; or

(d) if the bishop is the Primate, the person who, at the relevant time, is the next most senior Metropolitan who is available, seniority being determined by the date of consecration.

Where court, tribunal or other body determines bishop incapable

3. (1) If a court, tribunal or other body established by law having authority to make such orders, makes an order an effect of which is that a person who is the bishop of a diocese is declared, determined or otherwise found to be incapable, the relevant Metropolitan may, subject to section 11, by notice in writing given to the registrar of the bishop's diocese, declare the See vacant.

(2) The relevant Metropolitan, before making a declaration under sub-section (1), shall make or cause to be made an enquiry of a chancellor of a diocese of the Anglican Church of Australia and such other enquiries as the relevant Metropolitan thinks fit.

(3) The relevant Metropolitan shall cause a copy of the notice under sub-section (1) to be given to the bishop to whom it relates, to the registrar of the relevant Metropolitan's diocese and, unless the bishop is the Primate, to the Primate.

Where suspected inability reported to relevant Metropolitan

4. If three members of the synod of a diocese consider on reasonable grounds that the bishop of the diocese may be incapable, those members may, in writing, report the matter to the relevant Metropolitan.

Relevant Metropolitan may appoint panel of inquiry

5. (1) The relevant Metropolitan, upon receiving a report under section 4, may, if the relevant Metropolitan considers it appropriate, appoint a panel to inquire into the matter the subject of the report.

(2) The panel shall consist of at least 3 persons appointed by the relevant Metropolitan, at least one of whom is a qualified medical practitioner and at least one of whom is a qualified legal practitioner.

(3) The relevant Metropolitan shall appoint one of the members of the panel to chair the panel.

(4) Subject to this canon, the panel shall determine its own procedure.

Authority to Disclose Information

6. This canon shall be sufficient authority from the Bishop concerned, who shall be deemed to have given such authority, for any medical practitioner who has treated the Bishop at any time in the previous 2 years to disclose information relating to the Bishop's medical condition to the panel, or the Tribunal, or any member thereof.

Report by panel

7. (1) A panel appointed under this canon shall report to the relevant Metropolitan within 2 months after being appointed or, if the relevant Metropolitan approves a longer period, within that longer period.

(2) The relevant Metropolitan -

(a) shall send a copy of the report of the panel to the bishop of the diocese; and

(b) if the panel reports that it considers that there are reasonable grounds for considering that the bishop is incapable, shall, in writing, ask the bishop for a response to the report within 21 days after the bishop receives the copy.

Suspension of bishop from office

8. (1) If the panel reports that it considers that there are reasonable grounds for considering that the bishop is incapable, the relevant Metropolitan may, by notice given to the bishop, suspend the bishop from office.

(2) The relevant Metropolitan shall cause a copy of the notice under sub-section (1) to be given to the registrar of the bishop's diocese, to the registrar of the relevant Metropolitan's diocese and, unless the bishop is the Primate, to the Primate.

(3) The suspension -

(a) has effect as an absence of the bishop from the See ; and

(b) ceases to have effect -

(i) upon a determination by a tribunal appointed under section 9 or 10 that the bishop is not incapable; or

(ii) upon the See becoming vacant (whether or not under this canon)

whichever first occurs.

See may be declared vacant if report not contested

9. (1) Unless the bishop of a diocese to whom a report is sent under section 6 contests the report in accordance with section 9, the relevant Metropolitan may, subject to section 11 by notice given to the bishop, declare the See vacant.

(2) The relevant Metropolitan shall cause a copy of the notice under sub-section (1) to be given to the registrar of the bishop's diocese, to the registrar of the relevant Metropolitan's diocese and, unless the bishop is the Primate, to the Primate.

Where report of panel contested

10. (1) If the bishop of a diocese, by notice in writing given to the relevant Metropolitan within 21 days after receiving the copy of a report under section 6, contests the report, the relevant Metropolitan shall appoint a tribunal to determine the matter.

(2) The tribunal shall consist of 3 persons appointed by the relevant Metropolitan of whom one shall be a chancellor of a diocese of the Anglican Church of Australia, who shall be president of the tribunal, one shall be a bishop of another such diocese and one shall be a qualified medical practitioner.

(3) A person who has been concerned in any way with an investigation or report into the capacity of the bishop, or who is or has been a member of the synod of that diocese while that bishop has been the bishop of the diocese, is ineligible to be a member of a tribunal appointed under this section in relation to the bishop.

(4) Subject to this canon, the tribunal shall determine its own procedure.

Determination by tribunal under section 9 and appeal

11. (1) The tribunal under section 9 shall determine whether or not, in its opinion, the bishop of the diocese is incapable and shall report its determination in writing to the relevant Metropolitan.

(2) The relevant Metropolitan shall give a copy of the determination of the tribunal under section 9 to the bishop to whom it relates and to the registrar of the bishop's diocese.

(3) The bishop may appeal, on a question of law only, from a determination of the tribunal under section 9 to a tribunal consisting of the members for the time being of the Appellate Tribunal.

(4) Subject to this canon, the procedure of a tribunal under this section shall, so far as practicable, be the procedure of the Appellate Tribunal.

(5) If the bishop does not, within 7 days after a copy is given to the bishop or the registrar of the bishop's diocese, whichever is the later, of a determination of the tribunal under section 9 that the bishop is incapable, give notice in writing to the Registrar of the Appellate Tribunal of an appeal to the tribunal under this section on a question of law, the relevant Metropolitan may, subject to section 11 by notice in writing given to the bishop or the registrar of the bishop's diocese, declare the See vacant.

(6) If the bishop appeals on a question of law in accordance with sub-section (5) and the tribunal under this section, in determining the appeal, upholds the determination of the tribunal under section 9, the relevant

Metropolitan may, subject to section 11 by notice in writing given to the bishop or the registrar of the bishop's diocese, declare the See vacant.

(7) The relevant Metropolitan shall cause a copy of a notice under sub-section (5) or (6) to be given to the registrar of the relevant Metropolitan's diocese and, unless the bishop is the Primate, to the Primate.

(8) Despite section 7(3), if a bishop who is suspended from office under section 7(1) appeals to a tribunal under this section, the suspension continues until -

(a) the tribunal under this section determines that the bishop is not incapable; or

(b) upon the See becoming vacant (whether or not under this canon), whichever first occurs.

Consultation with Diocesan Council or Standing Committee

12. Before declaring a See vacant in accordance with the provisions of this canon the relevant Metropolitan shall convene a meeting in the diocese concerned, of the members of the relevant Diocesan Council or Standing Committee in order to consult with them as to the making or implementation of any declaration of the vacancy in the See.

Reimbursement by Diocese of Expenditure

13. Any expenditure incurred by the relevant metropolitan in the administration of this Canon in relation to the Bishop of a Diocese, including expenses incurred in relation to the panel and any Tribunal shall be paid or reimbursed by that Diocese.

Canon affects order and good government

14. This canon affects the order and good government of this Church and shall not come into operation in a diocese unless and until the diocese adopts and assents to this canon by ordinance of the synod of the diocese.

Determination VI, 1891 to cease to have effect

15. The Determination of the General Synod of the Dioceses in Australia and Tasmania made on 3 October 1891 ceases to have effect in a diocese which adopts this canon.

Second Schedule

A Canon to amend the Bishop (Incapacity) Canon 1995 and for other purposes.

The General Synod prescribes as follows -

Short title

1. This Canon may be cited as the "Bishop (Incapacity) (Amendment) Canon 1998".

Correction of cross-references

2. In the Bishop (Incapacity) Canon 1995 -

(a) in section 3(1), for "11" substitute "12";

(b) in section 8(3)(b)(i), for "9 or 10" substitute "10 or 11";

(c) in section 9(1) -

(i) for "6" substitute "7";

(ii) for "9" substitute "10";

(iii) for "11" substitute "12";

(d) in section 10(1), for "6" substitute "7";

(e) in section 11 -

(i) for "9" (wherever occurring) substitute "10";

(ii) for "11" (wherever occurring) substitute "12";

(iii) in sub-section (8), for "7(3)" substitute "8(3)";

(iv) in sub-section (8), for "7(1)" substitute "8(1)".

Amendment of section 11(8)

3. In section 11(8) of the Bishop (Incapacity) Canon 1995, for all words and expressions after paragraph (a) substitute -

"(b) the See becomes vacant (whether or not under this canon) -

whichever first occurs."

I Certify that the Ordinance as printed is in accordance with the Ordinance as reported.

N M CAMERON

Chairman of Committees

We Certify that this Ordinance was passed by the Synod of the Diocese of Sydney on 13 October 1999.

C J MORONEY

M A PAYNE

Secretaries of Synod

I Assent to this Ordinance.

R H GOODHEW

Archbishop of Sydney

21/10/1999