
General Synod - Long Service Leave Canon 1992 Adopting Ordinance 1992

(Reprinted under the Interpretation Ordinance 1985.)

The General Synod - Long Service Leave Canon 1992 Adopting Ordinance 1992 as amended by the Miscellaneous Amendments Ordinance 1993.

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Long Title

An Ordinance to adopt General Synod Canon No 8 of 1992.

Preamble

Whereas it is expedient to adopt the Long Service Leave Canon 1992, the text of which is the Schedule to this Ordinance.

Now the Synod of the Diocese of Sydney Hereby Ordains Declares Directs and Rules as follows-

Citation

1. This Ordinance may be cited as the "General Synod - Long Service Leave Canon 1992 Adopting Ordinance 1992".

Adoption and Assent

2. This Synod hereby adopts General Synod Canon No 8 of 1992 and assents to the financial liability imposed thereunder.

Amendment of Long Service Leave Ordinance 1973

3. On and from the date General Synod Canon No 8 of 1992 comes into operation, the Long Service Leave Ordinance 1973 is amended as follows -

- (a) by deleting all references to "Long Service Leave Canon 1966-1973" and "Long Service Leave Canon 1966" and by inserting in each case instead -
"Long Service Leave Canon 1992"
- (b) by deleting from clause 5(1) the words "General Synod - Long Service Leave Canon 1966-1969 Adopting Ordinance 1969" and by inserting instead -
"General Synod - Long Service Leave Canon 1992 Adopting Ordinance 1992"
- (c) by deleting clause 14.

Regulations

¹ 4. The Standing Committee is empowered to make regulations for the carrying into effect of the long service leave scheme under General Synod Canon No.8 of 1992 within the Diocese and of matters incidental thereto and further may make regulations, not consistent with this ordinance, for or with respect to any matter that is necessary or convenient to be prescribed for carrying out or giving effect to this ordinance.

Schedule

Canon No 8 of 1992

A canon to repeal the Long Service Leave Canon 1966-1987 and to make new provision for Long Service Leave for Members of the Clergy and for other purposes.

The General Synod prescribes as follows -

Part I: Introductory

Title

1. This Canon may be cited as the Long Service Leave Canon 1992.

Commencement

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 adopted by the Synods of each of the dioceses that are participating dioceses under the former Canon (in this Canon called "the date of commencement").

(2) When the General Secretary of General Synod has received the necessary notices of adoption for the purpose of sub-section (2), the General Secretary of General Synod shall notify each diocese of the date on which this Canon will commence.

The Fund

3. The Long Service Leave Fund established under the former Canon continues in existence under and subject to this Canon and is in this Canon called "the Fund".

Definitions

4. (1) Under this Canon or in any regulation made pursuant to the provisions of this Canon 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 Canon;

"Church" means the Anglican Church of Australia;

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

"Former Canon" means the Long Service Leave Canon 1966-1987;

"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;

"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;
- (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;
- (iv) a person in holy orders on missionary service; or
- (v) for the purposes of this Canon, 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.

"Notional Stipend" means notional annual stipend within the meaning of section 44;

"Ordinary Stipend" in relation to a member of the clergy means stipend or salary at the rate paid to the member immediately preceding the date on which the member enters or is deemed to enter upon long service leave;

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

“Participating Diocese” means -

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

“Participating Organisation” means -

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

“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 Canon;

“Qualifying Service” means qualifying service within the meaning of section 38;

“Service” means service in a full time capacity as a member of the clergy -

- (i) in a diocese of the Church or in a diocese which was formerly part of the Church;
- (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
- (iii) as an employee of a participating organisation unless the Board determines in its absolute discretion that the duties of the employee are not duties appropriate to a person serving as a member of the clergy;

and includes any period during such service of annual holiday leave or of furlough and any period of long service leave under the former Canon or this Canon, and “serve” and “serving” have corresponding meanings;

“Standing Committee” means the Standing Committee of General Synod; and

“Supplementary Allowance” means a supplementary allowance within the meaning of section 44.

(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 Canon are deemed to be part of this Canon but the headings to sections and any footnotes are not.

Part II: The Board

The Board

5. For the purposes of this Canon there is a Board called the Long Service Leave Board.

Membership

6. (1) A person may not be elected a member of the Board who has -
(a) been declared by any competent court incapable of managing his or her affairs; or
(b) attained the age of 72 years.

(2) Subject to section 7, 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 Canon 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 Canon, 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) 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 (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.
- (6) Subject to sub-section (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
 - (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.
 - (7) A member of the Board is eligible for re-election if still a member of a House of General Synod.

Vacancies

7. (1) A member of the Board ceases to hold office if the member -
- (a) resigns;
 - (b) dies;
 - (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;
 - (e) attains the age of 72 years;
 - (f) is removed by resolution of the Standing Committee; or
 - (g) ceases to be a member of the House of General Synod of which he or she was a member when elected or appointed to be a member of the Board.
- (2) The Standing Committee by resolution may at any time -
- (a) remove a member of the Board from office; or
 - (b) fill a vacancy which occurs in an office of member of the Board.
- (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.
- (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.

Chair

8. (1) The Board at its first meeting after each General Synod must elect from among its members a person to occupy the chair.
- (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

9. 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

10. 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

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

Rules and Regulations

12. (1) Subject to Part IV of this Canon the powers of the Board include the power by resolution of the Board to make rules and regulations not inconsistent with this Canon and necessary or convenient to be made for giving effect to this Canon including, but without limiting the generality of the foregoing, with respect to -

- (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 Canon, the appointment of committees of its members and co-option to membership of any such committee;
- (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;
- (c) the appointment of all necessary officers, definition of their duties and their remuneration (if any);
- (d) money property investments and audit;
- (e) actuarial investigations consultation approval and advice;
- (f) contributors;
- (g) benefits; and
- (h) any matters in which under this Canon the Board has a discretion power or duty.

(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.

(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.

(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 invalidate or affect anything done or contracted to be done under a rule or regulation before its disallowance.

(5) Upon disallowance by General Synod or the Standing Committee of a rule or regulation made under this Canon 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.

(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.

Actuarial Advice

13. 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.

Discretions

14. Subject only to this Canon, the Board in exercise of the authorities, powers and discretions vested in it under this Canon has an absolute discretion and -

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

- (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

- 15. (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
 - (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.
- (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 -
 - (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;
 - (b) that member's interest as a member of the clergy; or
 - (c) being an honorary office holder in an organisation or corporation with which the Corporation contracts.

Indemnity

- 16. (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 Canon 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.
- (2) In relation to a person mentioned in sub-section 16 (1) the expression "personal liability" means liability for -
 - (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;
 - (b) involuntary loss or misapplication of the Fund or of any entitlement payable from the Fund;
 - (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 11 to perform a function of the Board in performing that function.

Money

- 17. (1) The Board must collect, and pay promptly into a bank, in the name of the Fund, all money paid to the Fund.
- (2) The Fund must be applied by the Board to the purposes of this Canon but the expenses of the Board and of the management of the Fund are a first charge on the Fund.
- (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

- 18. The Board must -
 - (a) keep account of all money received by and disbursed from the Fund and all dealings in connection with that money;
 - (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;
 - (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;

- (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

19. (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 -

- (a) the Standing Committee;
- (b) the Bishop and Registrar of every participating diocese; and
- (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 (1) made since that Session must be laid before each Ordinary Session of General Synod.

Limit of Payment

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

Insufficient Funds

21. 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 Canon 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

Appointment

22. So far as the Corporations Law of the State of Victoria permits, the Board of the Fund must procure at all times that under the Memorandum and Articles of Association of the Corporation -

- (a) there must be not less than 5 members of the Corporation;
- (b) except as provided in paragraph (a) the number of members of the Corporation always equals the number of members of the Board of the Fund;
- (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;
- (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
- (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

23. So far as the Corporations Law of the State of Victoria 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 -

- (a) is continuously absent from the Commonwealth of Australia for more than 3 months without the consent of the remaining members of the Corporation;
- (b) resigns;
- (c) fails to attend 3 successive meetings of the Directors of the Corporation without leave of the Board of the Corporation;
- (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.

Age Qualification

24. So far as the Corporations Law of the State of Victoria permits, the Board of the Fund must procure at all times that under the Memorandum and Articles of Association of the Corporation a person who has attained the age of 72 years is not eligible to be appointed a member of the Corporation and a member must retire forthwith upon attaining that age.

Powers of Investment and Borrowing

25. (1) The Corporation acting upon the direction of the Board of the Fund has power -
- (a) to invest the assets of the Fund;
 - (b) to vary or realise those investments; and
 - (c) to underwrite or sub-underwrite the issue of any investments authorised under this Canon.
- (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.

Duty of Investment

26. Subject to -
- (a) the direction of the Board of the Fund; or
 - (b) the direction (if any) of
 - (i) General Synod; or
 - (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.

Part IV: The Actuary

Appointment

27. (1) The Board must appoint an Actuary.
- (2) The Actuary is subject to the same age qualification as the members of the Board.
28. The Actuary holds office for a term of 3 years or such lesser period as is specified by the Board but subject to age qualification is eligible for re-appointment for a further term.

Actuarial Responsibilities

29. (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.
- (2) An actuarial report must be given to the Board in relation to each investigation referred to in sub-section (1).
- (3) Arising from an actuarial investigation the Board may make, alter or rescind rules or regulations under section 12 relating to benefits payable to members of the clergy.
- (4) The Actuary must give advice to the Board upon the request of the Board and may give advice at other times.

Part V: Contributions

Additional Participating Dioceses

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

Participating Organisation

31. (1) An organisation which employs 1 or more members of the clergy and agrees to the terms and conditions of participation in the scheme of this Canon, upon application to and approval by the Board, becomes a participating organisation.
- (2) A participating organisation may make contributions to the Fund on the account of any member of the clergy who is employed by the organisation. Contributions must be of the amount and made at the times which would be appropriate if that member of the clergy were rendering qualifying service in a participating diocese.

Amount of Contributions

32. Subject to any direction of the General Synod or of the Standing Committee the rate of annual contribution for the purpose of this Canon -
- (a) must be set by the Board; and
 - (b) applies from the following first day of January.

Responsibility for Contributions

33. (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 member of the clergy rendering qualifying service in that diocese, unless the diocese determines to the contrary.

(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 member of the clergy an amount equal to a 365th part of the annual contribution fixed under section 32.

Payment of Contributions to Diocese

34. Each amount payable to a diocese under section 33 is payable at such times and in such manner as the diocese prescribes.

Payment of Contributions to the Fund

35. (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 member of the clergy 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 32 of the Canon as is apportionable to the number of completed days of the member's qualifying service so rendered during the quarter.

(2) In the event of payments not being made within the time limit in sub-section (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.

Part VI: Entitlements

General

36. (1) Subject to this Canon every member of the clergy serving in a participating diocese or with a participating organisation is entitled to long service leave on his or her ordinary stipend or salary.

- (2) The entitlement of a person employed by a participating organisation -
- (a) comprises such amounts; and
 - (b) is payable at such times;

as would in like circumstances be payable if the person's employment were qualifying service rendered in a participating diocese and the participating organisation were that diocese.

Amount of Long Service Leave

37. (1) The amount of long service leave to which a member of the clergy becomes entitled is -
- (a) on completion of the first 10 years of qualifying service, a period of 10 weeks leave;
 - (b) on completion of each subsequent 5 years of qualifying service, a period of 5 weeks leave; and
 - (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).
- (2) Sub-section (3) applies where in the opinion of the Board -
- (a) the relevant circumstances of a member of the clergy are abnormal; and
 - (b) it would be to the disadvantage of the member for sub-section (3) not to apply.
- (3) Where this sub-section applies the Board may fix -
- (a) (i) a period of qualifying service of less than 10 years where the member has not completed 10 years qualifying service; or
 - (ii) a period of less than 5 years further qualifying service where the member has completed 10 years qualifying service and part only of any subsequent period of 5 years qualifying service; and
 - (b) a period of long service leave to which the member is entitled upon completion of the period fixed under sub-section (a).

Qualifying Service

38. (1) Qualifying service means -

- (a) service at any time whether before or after Parts II and III of the former Canon came into force -
 - (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 former Canon; and
 - (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;
 - (b) service at any time after Parts II and III of the former Canon came into force -
 - (i) in any other diocese after that diocese has become a participating diocese; or
 - (ii) in a participating organisation after that organisation has become a participating organisation.
- (2) Notwithstanding any other provisions of this Canon, in calculating the length of qualifying service of any member of the clergy the following must not be taken into account -
- (a) any excess over 15 years service rendered before Parts II and III of the former Canon came into force;
 - (b) any service rendered after Parts II and III of the former Canon came into force in respect of which -
 - (i) the contributions mentioned in Part V have not been paid; or
 - (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;
 - (c) any period of service in respect of which leave has been taken or payment made under the provisions of the former Canon, this Canon or of any other long service leave scheme,
 - (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 Canon came into force. This paragraph does not apply however in calculating the length of qualifying service of any member of the clergy who has made application under sub-section (3).
- (3) (a) When on a particular date a member of the clergy has -
- (i) begun to render qualifying service; or
 - (ii) resumed rendering qualifying service;
- the member may make application to the Board to be deemed to have begun or resumed rendering that service on an earlier date.
- (b) The Board, acting upon actuarial advice, may determine a date from which and conditions (including conditions as to payment of contributions in respect of the period between the last mentioned date in paragraph (a) and the first mentioned date) subject to which the applicant under paragraph (a) is deemed to have begun or resumed rendering qualifying service as the case may be.
- (c) In making a determination under paragraph 38(3)(b) the Board -
- (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
 - (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;
- in respect of which the member has not under the former Canon or this Canon taken leave or received payment.
- (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
 - (ii) the qualifying service having been rendered (wholly or partly) before the commencement of this Canon.
- Where any such record has existed but no longer exists the Board -
- (iii) may still determine a date under paragraph (b); and
 - (iv) if it sees fit may at any time reconstruct the record to its satisfaction and rely on the reconstructed record.

Periods of Leave

39. Leave may be granted and taken in 1 continuous period or if the member of the clergy 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 10 weeks, in 2 separate periods; or
- (b) where the amount of the leave exceeds 10 weeks, in 2 or 3 separate periods.

Annual Holidays Excluded

40. Long service leave taken under this Canon is exclusive of annual holidays but is inclusive of all other holidays occurring during the leave.

When Leave to be Taken

41. Subject to Part VII of this Canon where a member of the clergy has become entitled to long service leave under this Canon the leave must be given and the member of the clergy must take the leave -

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

Priority as Between Members

42. Participating dioceses and participating organisations determine the order in which members of the clergy 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

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

Part VII: Payment

Notional Stipend and Supplementary Allowance

44. (1) The Standing Committee acting upon the advice of the Board may from time to time determine -

- (a) a notional annual stipend in respect of all members of the clergy expressed as a sum per annum; or
- (b) a notional annual stipend as so expressed in respect of each of two or more categories of members of the clergy determined by the Standing Committee on the advice of the Board;

effective from the next first day of January.

- (2) In respect of each day of long service leave actually taken the rate at which supplementary allowance is payable is:
 - (a) subject to paragraph (b), a rate per day equal to 35.5% of a 365th part of the notional stipend; or
 - (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

45. (1) Where a member of the clergy 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 -

- (a) the member must be paid his or her salary or ordinary stipend in respect of that period of leave either -
 - (i) in a single payment when the member enters upon the period of leave; or
 - (ii) at the time or times at which the member's salary or stipend would have been paid if he or she had not taken leave;
- (b) (i) the Board must pay to the diocese in which the member was serving or the participating organisation by which the member 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;
- (ii) where the salary or ordinary stipend of the member 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
 - (c) the Board in addition must pay to the diocese or participating organisation a supplementary allowance in respect of that period of leave and that supplementary allowance must be paid in full to the member of the clergy.
- (2) Upon a payment being made by the Board under this section the liability of the Fund in respect of the member of the clergy for whose benefit it is paid is discharged to the extent of that payment.

Payment Direct to Member

46. (1) Where a member of the clergy 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 member so much of the notional annual stipend as is apportionable to the period of that leave and a corresponding supplementary allowance.

(2) The Board may make the payment under sub-section (1) conditional upon the member entering into such an agreement with it relating to the acceptance by the member of other payments in the nature of stipend salary or wages or the like as the Board deems proper.

Payment in lieu on Death

47. (1) When the qualifying service of a member of the clergy terminates by reason of the member's death then an amount is to be paid equal to 1/52nd proportion of the notional stipend current at the date of the member's death for each full year of qualifying service rendered together with a proportionate payment for any incomplete year of qualifying service rendered.

- (2) The amount payable under sub-section (1) -
 - (a) is not to include a supplementary allowance; and
 - (b) is payable to such person or persons as the Board determines.

Payment in Lieu on Resignation or Retirement

48. (1) When the qualifying service of a member of the clergy terminates other than by reason of the member's death, and -

- (a) the member has completed part only of a subsequent period of 5 years qualifying service after completing the member's first 10 years of qualifying service; and
 - (b) sub-section 37(3) does not apply;
- then the member is to be paid an amount equal to 1/52nd proportion of the then current notional stipend for each full year of qualifying service rendered together with a proportionate payment for any incomplete year of qualifying service rendered.

- (2) The amount payable under sub-section (1) is not to include a supplementary allowance.

No Payment in Lieu of Leave

49. Except as provided in this Part payments must not be made to a member of the clergy in lieu of any long service leave to which the member is entitled under this Canon nor shall any such payment be accepted by the member.

Part VIII: General

Winding Up

50. (1) In the event of the winding up of the Fund the Board may subject to section 13 but otherwise in its absolute discretion and notwithstanding anything otherwise contained in the Canon -

- (a) transfer the Fund to another Fund or organisation whose constitution and rules for the payment of benefits are as nearly as possible similar to those of the Fund, to the end that as nearly as possible the unpaid accruing and accrued benefits still to be paid by the Fund will be received by those persons dioceses and organisations who would have received them had the Fund not been wound up; or
- (b) repay the Fund to the participating dioceses or participating organisations or other persons from which and from whom contributions have been received under the Canon which

contributions have not given rise to payment by the Fund of supplementary allowance or long service leave.

(2) Any surplus which, following payment of funds or refunds under sub-section (1), it is impracticable to distribute by way of transfer or refund (or both) must be paid to the Anglican Church of Australia Trust Corporation to be applied in the provision of long service leave and other benefits for -

- (a) members of the clergy; and
- (b) such other categories of persons as are from time to time prescribed by the Standing Committee.

(3) The payment and transfer under this section of all of the Fund discharges the Corporation and the Board from their obligations under this Canon.

Repeal

51. The former 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 the former 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 former Canon had not been so repealed.

Endnotes

- 1. Inserted by Ordinance No 39, 1993.

MARK PAYNE
Legal Officer

W.G.S. GOTLEY
Diocesan Secretary

19 October 1993