

# Church Of England Empowering Act 1928

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**Schedule 3**  
**Title G—Canon I**

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**An Act to declare and define the powers of the General Synod of the Church of the Province of New Zealand, commonly called the Church of England, to alter the formularies of the said church and the authorized version of the Bible.**

**Preamble**

Whereas the Constitution of the Church of the Province of New Zealand, commonly called the Church of England, and hereinafter called **the Church**, contains certain fundamental provisions relating to the doctrine, Formularies, and government of the Church, which fundamental provisions are set forth in Schedule 1 to this Act: And whereas the framers of the said Constitution drafted the same upon certain assumptions concerning the legal relationship of the Church with the United Church of England and Ireland, the correctness of which assumptions was subsequently questioned: And whereas the Union of the Churches of England and Ireland was dissolved and the Church of Ireland was disestablished by the Act of the Imperial Parliament intituled the Irish Church Act 1869: And whereas by reason of the matters mentioned in the two last preceding recitals doubts have arisen as to the powers of the Church to make alterations in the Formularies and in the Authorized Version of the Bible, as both are hereinafter defined, and it is expedient, for the removal of such doubts, to declare and define the powers of the Church in that behalf:

**1 Short title**

This Act may be cited as the Church of England Empowering Act 1928.

**2 Interpretation**

Throughout this Act the following terms shall be interpreted as hereinafter mentioned, that is to say,

**the Church** shall extend to, mean, and include the Church of the Province of New Zealand, commonly called the Church of England, which in the Constitution of such Church is described as “The [*or This, or A*] Branch of the United Church of England and Ireland in New Zealand,” and as “this Branch of the Church of England”

**the Constitution of the Church** and **The Constitution** shall extend to, mean, and include the Constitution adopted at a General Conference of the Bishops, Clergy, and Laity held at Auckland on 13 June 1857, and revised at the General Synod held at Christchurch in the year 1865, as published under the authority of the General Synod at Wellington in the year 1928

**General Synod** shall, except where inconsistent with the context hereof, mean the representative governing body of the Church, including the representatives of the Missionary Dioceses from time to time declared by Canon or Statute of the General Synod to be associated with the General Synod.

The definition of General Synod was amended, as from 28 September 1966, pursuant to section 2 Church of England Empowering Amendment Act 1966 (1966 No 1 (P)).

**property** shall extend to, mean, and include real and personal property of every description, whether situated in the Dominion of New Zealand or elsewhere

**the Formularies** shall extend to, mean, and include the Book of Common Prayer, the Form and Manner of Making, Ordaining, and Consecrating of Bishops, Priests, and Deacons, and the 39 Articles of Religion, all referred to in clause one of the Constitution of the Church

**the Authorized Version of the Bible** shall extend to, mean, and include the version of the Holy Bible first published in England in the year 1611, and also referred to in clause 1 of the Constitution of the Church.

### **3 Power to alter Formularies for use in any part of the Province**

It shall be lawful for the Bishops, Clergy and Laity of the Church, in General Synod assembled, from time to time in such way and to such extent as may to them seem expedient, but subject to the provisions in this Act contained, to alter, add

to, or diminish the Formularies, or any one or more of them, or any part or parts thereof, or to frame or to adopt for use in the Church or in any part of the Province or in any Associated Missionary Diocese new Formularies in lieu thereof or as alternative thereto or of or to any part or parts thereof and to order or permit the use in public worship of a version or versions other than the Authorised Version of the Bible or of any part or parts thereof:

provided that the provisions of this section shall not empower or be deemed to empower the General Synod to depart from the Doctrine and Sacraments of Christ as defined in clause one of the Constitution.

Section 3 was repealed and substituted, as from 28 September 1966, pursuant to section 3 Church of England Empowering Amendment Act 1966 (1966 No 1 (P)).

#### **4 Procedure to effect alterations**

Such alteration, addition, diminution, framing, adoption, ordering, or permitting shall be deemed to be duly and validly made and to be authorized by section 3 of this Act only if—

- (a) the General Synod shall at any session have adopted a specific proposal for such alteration, addition, diminution, framing, adoption, ordering, or permitting with a view to making the same known to the several Diocesan Synods; and thereafter
- (b) a majority of the Diocesan Synods in New Zealand shall have assented to the proposal so made known to them; and thereafter
- (c) the General Synod, at a session after there shall have been a fresh General Election of its members subsequent to such proposal having been adopted, shall have confirmed the same by a majority of two-thirds of the members of each order:  
provided that not less than 1 year nor more than 5 years shall have elapsed between the first adoption of the proposal in the General Synod and its final confirmation therein; and
- (d) such of the provisions of Title C, Canon I, of the Canons of the General Synod now in force (or any provisions

hereafter made by the General Synod in amendment thereof or in substitution therefor) as are applicable to the circumstances, *mutatis mutandis*, shall have been observed; and

- (e) either—
  - (i) a period of 1 year (from the day on which the General Synod shall under paragraph (c) of this section have confirmed the proposal) shall have elapsed without an appeal from the said proposal having been made in accordance with the provisions of section 5 of this Act to the Tribunal referred to in that section upon the ground that the proposal involves a departure from the Doctrine and Sacraments of Christ as defined in clause one of the Constitution; or
  - (ii) if such an appeal shall have been made within such period, the same shall have been dismissed.

Paragraph (c) was repealed and substituted, as from 28 September 1966, by section 3 Church of England Empowering Amendment Act 1966 (1966 No 1(P)).

#### **4A Power to permit experimental use of new or amended form of service**

Where a proposal to add or alter the Formularies has been approved by the General Synod with a view to its being made known to the several Diocesan Synods, the General Synod may by resolution determine that, after the proposal has received the assent of the majority of the Diocesan Synods, the experimental use of the new or amended form of service be permitted under such conditions and for such period (terminating not later than the last day of the next ensuing ordinary session of the General Synod) as the General Synod shall determine.

Section 4A: inserted, on 28 September 1966 by section 5 of the Church of England Empowering Amendment Act 1966 (1966 No 1 (P)).

#### **5 Constitution of Tribunal**

- (1) The Tribunal referred to in paragraph (e) of section 4 of this Act shall consist of—

- (a) the bishops of the several dioceses in New Zealand for the time being;
  - (b) persons in priests' orders equal in number to the number of such dioceses;
  - (c) laymen being communicants of the Church (duly qualified as parishioners under Title B, Canon V, of the Canons of the General Synod, or any canon amending the same or in substitution therefor) equal in number to the number of such dioceses.
- (2) The priests and laymen shall be elected by General Synod, the priests being elected by the clerical members other than the bishops, and the laymen by the lay members. The first election shall take place at the first session of General Synod after the passing of this Act; and thereafter at the first session of General Synod following after each general election of synodsmen 2 priests and 2 laymen shall retire, their places being filled by priests and laymen elected by General Synod in manner aforesaid (the retiring members being eligible for re-election), the order of retirement of those first elected being determined by lot, and of those subsequently elected by the length of their tenure of office since their last election, or by lot where the number who have held office for the greatest length of time exceeds the number of those required to retire. The General Synod shall at its session when it shall create any new diocese elect the necessary additional priests and laymen as members of the Tribunal, but the bishop who has been newly appointed by reason of the creation of such new diocese shall not, nor shall the additional members of the Tribunal appointed in consequence of the creation of such new diocese, take part as such in any appeal already commenced at the date of his or their consecration or election (as the case may be). If any causal vacancy shall occur by the death or resignation in writing of any priest or layman or other cause, such vacancy shall be filled by a member elected by General Synod or by the Standing Committee of General Synod, whichever shall next meet (in either case the priests being elected by the clerical members other than the bishops, and the laymen by the lay members), and such member shall retire at the time when his predecessor in office would have retired.

- (3) The elected members of the Tribunal holding office at the commencement of an appeal shall continue to hold office for the purposes of such appeal until the same has been disposed of.
- (4) No person shall sit as a member of the said Tribunal when it is hearing and determining an appeal in which he is 1 of the appellants.
- (5) A quorum of the said Tribunal shall be a majority of the members entitled to sit of each order.
- (6) No appeal to the said Tribunal shall be dismissed except with the concurrence in writing of at least 2-thirds of the persons hearing the appeal.
- (7) No member of the said Tribunal shall take part in the decision on any appeal unless he has been present throughout the hearing thereof.
- (8) No appeal to the said Tribunal shall be made except by at least 5 persons, each of whom must be either a bishop of a diocese of the Church in New Zealand, or a clergyman holding the license of a bishop of such a diocese, or a communicant lay member of the Church duly qualified as a parishioner under Title B, Canon V, of the Canons of the General Synod (or any canon amending the same or in substitution therefor).

**6 Tribunal not bound by its previous decisions**

In any appeal the Tribunal may follow, but shall not be bound to follow, any judgment of the Tribunal in any prior appeal.

**7 Inherent jurisdiction of the Civil Court not excluded**

Nothing in this Act contained shall annul, limit, or abridge the inherent power of the High Court to prohibit anything purporting to be done under this Act on the ground that it is not a *bona fide* exercise of the powers conferred by this Act.

The reference to the High Court was substituted, as from 1 April 1980, for a reference to the Supreme Court pursuant to section 12 Judicature Amendment Act 1979 (1979 No 124).

**8 Rules of Court of Appeal to apply in certain matters**

In matters not provided for in this Act, or in the regulations hereunder, the Rules of the Court of Appeal of New Zealand for the time being shall, so far as applicable and where not

inconsistent with any provision of this Act or of any regulation hereunder for the time being in force, apply to proceedings in appeals under this Act.

**9 Power to make regulations**

The General Synod shall have full power to make such regulations as it shall think fit (not being inconsistent with the provisions of this Act) for the conduct of the proceedings of such Tribunal, and in and by such regulations may provide for payment by or to appellants of costs and expenses, and require appellants to give security for any costs and expenses they may be ordered to pay. The regulations set out in Schedule 2 to this Act shall, until the General Synod shall otherwise order, govern the proceedings of such Tribunal.

**10 Validation of Canon and of authorization of Table of Lessons**

Title G, Canon I, of the Canons of the General Synod as set forth in Schedule 3 to this Act shall be deemed to be in all respects as valid and effectual as if the provisions thereof had been duly made and enacted under the authority of this Act, and the Table of Lessons adopted by the Church of England in the year 1871 shall hereafter be, and shall be deemed ever since the year 1874 to have been, lawfully authorized for use in the Church.

**11 Identity of Church secured and title to property not to be affected**

None of the alterations, revocations, additions, diminutions, orderings, or permittings referred to in section 10 of this Act, nor any alteration, addition, diminution, framing, adoption, ordering, or permitting duly made and completed under the authority of this Act, shall affect or impair, or be deemed to have affected or impaired, the identity of the Church, or affect, jeopardize, or impair, or be deemed to have affected, jeopardized, or impaired, the title of any property from time to time held by or in trust for the Church, or by or in trust for the General Synod or any Diocesan Synod thereof, or by or in trust for any parish, parochial mission, or cathedral district, or other

local organization thereof, or by or in trust for any missionary diocese associated or connected with the Church, or by or in trust for any purpose whatsoever, general, local, or particular, connected with the Church or any organization thereof.

**12 Substitution of powers conferred by this Act for powers in certain clauses of the Constitution of the Church**

The powers conferred by this Act shall be in substitution for the powers purporting to be conferred by clauses 2, 3, and 4 of the Constitution.

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**Schedule 1**  
**The fundamental provisions of the**  
**Constitution of the Church**

- 1 This Branch of the United Church of England and Ireland in New Zealand doth hold and maintain the Doctrine and Sacraments of Christ as the Lord hath commanded in His Holy Word, and as the United Church of England and Ireland hath received and explained the same in the Book of Common Prayer, in the Form and Manner of Making, Ordaining, and Consecrating of Bishops, Priests, and Deacons, and in the 39 Articles of Religion. And the General Synod hereinafter constituted for the government of this Branch of the said Church shall also hold and maintain the said Doctrine and Sacraments of Christ, and shall have no power to make any alteration in the authorized version of the Holy Scriptures, or in the above-named Formularies of the Church.
- 2 Provided that nothing herein contained shall prevent the General Synod from accepting any alteration of the above-mentioned Formularies and Version of the Bible as may from time to time be adopted by the United Church of England and Ireland, with the consent of the Crown and Convocation.
- 3 Provided also that in case a license be granted by the Crown to this Branch of the Church of England to frame new and modify existing rules (not affecting doctrine) with the view of meeting the peculiar circumstances of this colony and native people, it

shall be lawful for this Branch of the said Church to avail itself of that liberty.

- 4 And whereas opinions have been expressed by eminent legal authorities in England that the property of the Church in New Zealand might be placed in jeopardy unless provision were made for the contingency of a separation of New Zealand from the Mother-country, and for that of an alteration in the existing relations between Church and State: It is hereby further declared that, in the event of a separation of the Colony of New Zealand from the Mother-country, or of a separation of the Church from the State in England and Ireland, the General Synod shall have full power to make such alterations in the articles, services, and ceremonies of this Branch of the United Church of England and Ireland in New Zealand as its altered circumstances may require, or to make such alterations as it may think fit in the Authorized Version of the Bible.
  - 5 There shall be a representative governing body for the management of the affairs of the Church, to be called the General Synod of the Branch of the United Church of England and Ireland in the Colony of New Zealand, which shall consist of 3 distinct orders—viz, the Bishops, the Clergy, and the Laity, the consent of all of which orders shall be necessary to all acts binding upon the Synod, and upon all persons recognizing its authority.
  - (6) The above provisions shall be deemed fundamental, and it shall not be within the power of the General Synod, or of any Diocesan Synod, to alter, revoke, add to, or diminish any of the same.
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**Schedule 2**  
**Regulations for the conduct of the**  
**proceedings of the Tribunal constituted**  
**under section 5**

- 1 Every appeal under this Act shall be instituted by a notice of appeal, which shall be signed by each of the appellants, and shall set forth the following matters:**
- (1) The full name, address, and occupation of each of the appellants:
  - (2) The qualification of each appellant under subsection (8) of section 5 of this Act, including, in the case of a licensed clergyman, a statement as to the office to which he is licensed, and, in the case of a lay member of the Church, a statement as to the parish or parochial district in which his name is registered in the Churchwardens' Book, and of the church or churches in which he is a communicant:
  - (3) An address, within 2 miles of the office of the Provincial Secretary, at which notices intended for the appellants in connection with their appeal may be delivered:
  - (4) The names, addresses, and occupations of the persons (if any), not being more than 3, appointed by the appellants to represent them in all proceedings connected with their appeal; no such person need be one of the appellants or have any qualifications under subsection (8) of section 5 of this Act:
  - (5) A concise statement as to the part or parts of the alteration of, addition to, or diminution of the Formularies, or of the new Formularies, or of the Version of the Bible (as the case may be) which the appellants allege to involve a departure from the Doctrine and Sacraments referred to in subparagraph (i) of paragraph (e) of section 4 of this Act, and as to the nature of the said alleged departure.

2

Such notice of appeal shall be delivered at the office of the Provincial Secretary within the time prescribed by this Act for making the appeal, and he shall forthwith send a copy thereof to each member of the committee appointed under subclause (1) of clause 3 hereof.

3

- (1) At the session referred to in paragraph (c) of section 4 of this Act the General Synod shall appoint 3 members of that Synod, 1 being a bishop, the second a clergy-man, and the third a layman (each member being elected by the members of his own order), to form a committee to be charged with the duty of presenting to the Tribunal the case in support of the alteration to, addition to, or diminution of, the said Formularies, or of the new Formularies, or of the Version of the Bible, as the case may be, in the event of an appeal being made under this Act. The said committee may appoint 3 persons to represent it in all proceedings connected with the appeal and to advocate its case before the said Tribunal. No such person need be a member of the said committee or of the General Synod, or have a qualification under subsection (8) of section 5 of this Act. If any member of the said committee shall die, or become incapable of acting or unwilling to act, or be absent from New Zealand at the time of the giving of a notice of appeal, his place on the said committee shall become vacant, and shall be filled by another member of his own order to be elected by the members of that order in the General Synod if it shall be in session when the vacancy occurs, or by the members of that order in the Standing Committee of the General Synod if the General Synod shall not then be in session: Provided that the said committee may act notwithstanding any casual vacancy in their number.
- (2) All notices and other documents in connection with the appeal may be served upon the said committee by being delivered at the office of the Provincial Secretary, who shall immediately forward a copy of the same to each member of such committee.

4

Within a period of 2 calendar months after service of a notice of appeal, the said committee shall cause to be served upon the appellants at their address for service a concise statement of their case in reply to the allegations contained in the notice of appeal, and shall deliver a copy of such statement at the office of the Provincial Secretary.

5

The Chancellor of the Diocese of which the Primate is Bishop may, upon application in that behalf made by the said committee within one calendar month after the service of the statement referred to in clause 4 hereof, and after giving the appellants an opportunity of being heard, order the appellants to give security to his satisfaction, within 2 calendar months after the making of such order, in a sum not exceeding \$500 for the payment of such costs and expenses of the appeal as the Tribunal may order the appellants to pay to the said committee in the event of the appeal being dismissed. Until such order for security shall have been complied with, all proceedings by the appellants upon the said appeal shall be deemed to be stayed, and if such security shall not be given within 3 calendar months after the making of such order, or such extended time (if any) as the said Chancellor may grant in that behalf, the said appeal shall stand dismissed, and the Chancellor may order the appellants to pay to the said committee such sum as he shall think fit for the costs and expenses of the appeal.

The reference to “\$500” was substituted, as from 10 July 1967, for the reference to “£250” pursuant to section 7(1) Decimal Currency Act 1964 (1964 No 27).

6

The Provincial Secretary shall, as soon as conveniently may be after the delivery of the statement by the said committee of its case, forward to each member of the Tribunal a copy of the notice of appeal and of the said statement.

7

The Primate shall then fix such time and place as he shall think to be convenient for the hearing of the appeal, and the Provincial Secretary shall forthwith give notice thereof to every member of the Tribunal and to each of the appellants and to each member of the said committee. The time fixed for the hearing of the appeal shall be not less than 2 or more than 4 calendar months after the delivery by the said committee of its statement of its case.

8

If at the time and place fixed for the hearing of the appeal a quorum of the said Tribunal shall not be present, the hearing shall be adjourned for a period of not less than 14 days or more than 2 calendar months, and so on from time to time, until the appeal can be heard.

9

The Tribunal may inquire into the qualification of all or any of the appellants under subsection (8) of section 5 of this Act, and if any appellant shall, after being given an opportunity of being heard in support of his qualification, be found by the Tribunal not to be so qualified, his name shall be struck out from the appeal. If as the result of such striking out less than 5 appellants shall remain, the remaining appellants shall be given an opportunity of adding sufficient qualified persons to make up at least 5 appellants within 1 calendar month after the number of appellants shall have been reduced below 5, and if they shall fail to do so the appeal shall stand dismissed. If the appeal shall be dismissed under this clause, the Chancellor may order the appellants to pay to the said committee a sum for the costs and expenses of the appeal in the same manner as if the appeal had been dismissed after hearing under clause 10 hereof.

10

Upon the hearing of the appeal the Primate shall preside, and the Tribunal shall hear first the case presented by or on behalf of the appellants, then the case presented by or on behalf of the said committee, and then the reply of the appellants. The Tribunal may thereupon deliver its judgment, or it may adjourn to consider the appeal. If there shall be more than 1 appeal, the Primate may, at his discretion, direct that any 2 or more appeals be heard together.

11

At the hearing of the appeal the case on either side may be presented by any 1 or more of the appellants or of the said com-

mittee, or of the persons appointed to represent the appellants or the committee. If there shall be no appearance either by or on behalf of the appellants or by or on behalf of the committee, or no appearance on each side, the Tribunal may decide the appeal notwithstanding any such non-appearance.

12

If the appeal shall be allowed, the Tribunal shall specify in its judgment the matters in respect of which it finds that the alteration of, addition to, or diminution of the Formularies, or the new Formularies, or the Version of the Bible, involves a departure from the said Doctrine and Sacraments.

13

The Tribunal may award to the successful party such sum as it shall think fit towards its costs and expenses of the appeal, and if the appeal be dismissed such sum shall constitute a debt due by the appellants jointly and severally to the said committee; or if the appeal be allowed, the General Synod, or, if it be not in session, the Standing Committee thereof, shall make provision for the payment of such sum out of any funds under its control available for the general purposes of the Church in the Province.

14

If the Primate shall himself be an appellant, or from any cause be absent or be unable to act, every reference to the Primate, or to the Chancellor of the Diocese of which he is Bishop, in these regulations shall be deemed to be a reference to the senior bishop who is not an appellant, and who is present and able to act, or to the Chancellor of the diocese of such bishop.

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### Schedule 3

#### Title G—Canon I

##### Of certain necessary alterations

- 1  
Those parts of the Service for the Consecration of Bishops which relate to the King's Mandate shall be omitted and discontinued.
- 2  
Those parts of the Services for the Consecration of Bishops and for the Ordering of Priests and Deacons which refer specially to the parent Church and State may be omitted and changed so as to adapt them to the circumstances of the colony.
- 3  
The following explanatory words shall be appended to the twenty-first of the 39 Articles, viz: "It is not to be inferred from this article that the Church in the colony is hindered from meeting in council without the authority of the Civil power."
- 4  
The following explanatory words shall be appended to the thirty-seventh of the 39 Articles, viz: "It is not to be inferred from this article that the Civil power has authority in this colony to determine purely spiritual questions, or to hinder the Church in the colony from finally determining such questions by its own authority, or by tribunals constituted under its authority."
- 5  
In future, in all cases in which it may be necessary to refer to the Church in the colony (which is in the Constitution designated as a branch of the United Church of England and Ireland), it shall be sufficient if it be referred to or designated as

the Church of the Province of New Zealand, commonly called  
the Church of England.