

THE CLERGY DISCIPLINE ORDINANCE 1983

AN ORDINANCE to repeal The Clergy Discipline Ordinance 1926-77 and to make further provision for the discipline of clergymen.

WHEREAS Chapter IX of the Constitution of The Anglican Church of Australia requires that there shall be a diocesan tribunal

AND WHEREAS it is expedient to provide for the constitution of such a tribunal and certain other matters pertaining to clergy discipline and the trial of ecclesiastical offences NOW THE SYNOD HEREBY DETERMINES:

Title

1. This Ordinance may be cited as the "Clergy Discipline Ordinance 1983".

Repeal

2. The Clergy Discipline Ordinance 1926-1977 is repealed.

Adoption of General Synod Canons

3. The following Canons of the General Synod of the Anglican Church of Australia are hereby adopted, namely:

The Special Tribunal Canon and the Board of Assessors 1962

The Board of Assessors (Appellate Tribunal) Canon 1962.

The Tribunals Procedure Canon 1962.

The Offences Canon 1962-1981.

Diocesan Tribunal

4. The Diocesan Tribunal shall consist of the Bishop or a Deputy President appointed by him and one clergyman and one layman selected in manner hereinafter provided from the panel of assessors hereinafter mentioned unless the Bishop, having regard to the nature of the charge, determines that the Diocesan Tribunal shall consist of the Bishop or a Deputy President as the case may be and two priests and two laymen selected as aforesaid.

Panel of Assessors

5. (1) The panel of assessors shall consist of
 - (a) Eight clergymen each of whom shall have been in priest's orders for not fewer than ten years.

- (b) Eight laymen who are either lay synodsmen or who are qualified to be elected as lay synodsmen.
- (2) The provisions of the Elections and Appointments Ordinance 1980 shall apply to the election of members of the panel of assessors provided however that any member of the panel selected for the Diocesan Tribunal shall continue in office until the determination of the proceedings for which he was selected notwithstanding the election in the meantime of members of the panel.
- (3) Any person elected as an assessor under the repealed Ordinance at the session of the Synod at which this Ordinance is passed shall be deemed to have been duly elected to the panel of assessors under this Ordinance.

Powers of the Diocesan Tribunal

- 6. The Diocesan Tribunal in addition to the powers conferred on it by section 54 (2) of the Constitution of The Anglican Church of Australia and any Canon of the General Synod of The Anglican Church of Australia may hear and determine charges made in respect of the breach of any provisions of the Constitution or any Ordinance alleged to have been committed by any clergyman or by any person in Holy Orders resident in the Diocese, and shall have such other powers as the Synod shall by Ordinance determine.

Additional Clerical Offences

- 6A Pursuant to sub-clause 6 of clause 1 of the Offences Canon 1962 and section 54(2) of the Constitution of The Anglican Church of Australia and all other enabling powers this Synod specifies and prescribes by this Ordinance the following additional offences to those set out in the Canon:
 - (1) conduct unbecoming the office and work of a priest;
 - (2) racial abuse or harassment; and
 - (3) sexual abuse or harassment.

The Promotion of Charges

- 7. A charge in respect of any matter over which the Diocesan Tribunal has jurisdiction shall be promoted in the manner provided by section 54 of the Constitution of The Anglican Church of Australia and any Rules made thereunder.

The Charge

- 8. (1) Subject to section 8A of this Ordinance, a charge shall be in writing in the form contained in the First Schedule to this Ordinance or in a form of like effect and shall -

- (a) be addressed to the Bishop,
 - (b) contain a statement of the facts alleged to constitute the offence,
 - (c) contain the names of witnesses (if any) prepared to be called in support of such facts, and
 - (d) be accompanied by copies of any documents relevant to the charge.
- (2) The charge shall be lodged in triplicate in the Registry of the Bishop.
 - (3) The Bishop shall forthwith refer the charge to a Board of Enquiry constituted as hereinafter provided.
 - (4) The Bishop shall cause a copy of the charge to be served upon the respondent who shall be requested to submit such reply thereto as he may desire to the Secretary of Synod within a time to be specified in such request.

A Charge Arising from Secular Proceedings

- 8A (1) If in relation to the subject of a charge, a member of the clergy is charged on information, complaint or otherwise with a criminal offence (“the secular complaint”) then the Bishop may refer the charge direct to the Diocesan Tribunal.
- (2) The Diocesan Tribunal may refrain from hearing or determining any charge to which this section relates until all process arising from the secular complaint has been duly heard and determined including the passage of sentence (if any) and the disposal of all appeals (if any) or rights of appeal.
 - (3) Whilst a charge to which this section relates is pending before the Diocesan Tribunal then the Bishop may, with the concurrence of the Diocesan Council, suspend the member of the clergy from his or her duties and office in accordance with the provisions of section 61 of the Constitution of the Anglican Church of Australia until the determination of the charge. In that event, the Bishop shall make such other arrangements for the performance of those duties and office as the Bishop shall see fit. The suspension of duties and office shall continue until such time as there is an order otherwise made by the Diocesan Tribunal.
 - (4) The Bishop in consultation with the Diocesan Council shall determine whether the suspension shall be with or without payment of stipend. If a stipend is to be paid to the member of the clergy during the period of suspension then the cost shall (unless otherwise determined) be met by the Parish or agency of the Synod for the period of up to three (3) months and thereafter shall be paid by the Synod. The decision as to whether or not a stipend is to be paid during the period of suspension may be reviewed from time to time by the Bishop in consultation with the Diocesan Council.

- (5) If a member of the clergy has been suspended from office and duties by the Bishop then the Diocesan Tribunal shall, at its first meeting held to consider the charge, determine whether such suspension should be determined or continued until the charge has been fully disposed of or otherwise.

Board of Enquiry

9. The Diocesan Council shall appoint a Board of Enquiry which shall consist of a Chairman who shall be the Assistant Bishop or an Archdeacon, one other clergyman and one lay synodsmen. Neither the clergyman nor the lay synodsmen so appointed shall be chosen from among the panel of assessors.

Procedure for Board of Enquiry

10. (1) A Board of Enquiry shall remain in office until it has reported in accordance with the provisions of this section and shall constitute a board of enquiry for the purposes of section 54 of the Constitution of The Anglican Church of Australia.
- (2) The Secretary of Synod shall convene a meeting or meetings of the Board of Enquiry and shall submit to the Board the charge, the accompanying documents (if any) and the respondent's reply. The Board may call for such other documents or signed statements in writing of witnesses as it thinks fit and may require witnesses or any of them to give an undertaking in the form of the second schedule to this Ordinance. The Board shall determine whether in its opinion on the material before it there is sufficient evidence for the charge to be heard by the Diocesan Tribunal.
- (3) The proceedings of the Board of Enquiry shall be in camera and the decision of the majority of the Board shall be the decision of the Board.
- (4) At the conclusion of its enquiry the Board shall report in writing to the Bishop whether in its opinion the charge is one proper to be heard by the Diocesan Tribunal.

Report of Insufficient Evidence

11. If the report of the Board discloses that there is no charge proper to be heard by the Diocesan Tribunal the Bishop shall forthwith dismiss the charge and inform the person or persons making the charge and the respondent accordingly.

Report of Sufficient Evidence

12. If the report of the Board discloses that the charge or any portion thereof is a charge proper to be heard by the Diocesan Tribunal the Bishop shall forthwith cause a notice to be served on the respondent requiring him to state whether he admits the charge. If the respondent within fourteen days of the service of such notice shall not in writing to the Bishop have admitted the charge or any portion thereof the charge or such portions thereof as have not been admitted shall be deemed to be denied.

Submission of Documents

13. If the report of the Board discloses that the charge is one proper to be heard by the Diocesan Tribunal the Board shall forward to the Bishop for submission to the Tribunal all documents and statements considered by the Board in reaching its determination.

Meeting for Selection of Members of Diocesan Tribunal

14. The Secretary of Synod shall by notice in writing served on the person or persons making the charge and on the respondent appoint a time and place for the selection by the Secretary of members of the Diocesan Tribunal and such parties or their duly appointed representatives shall be entitled to attend the selection of such members.

Presidency of the Diocesan Tribunal

15. Where a charge is made by a person appointed by the Bishop the Bishop shall not preside over the Diocesan Tribunal.

Selection of Members of the Diocesan Tribunal

16. (1) There shall be struck off from the panel of assessors the name of any member who is a person making the charge, a member of the Board of Enquiry, a witness named in the charge, the respondent, or a person who has been appointed Deputy President of the Diocesan Tribunal.
 - (2) The members of the Tribunal required by section 4 of this Ordinance (other than the President or Deputy President) shall be chosen by lot from among the members of the panel of assessors whose names have not been struck off.
 - (3) The remaining members of the panel of assessors shall constitute reserve members of the Tribunal and the order of their selection as members of the Tribunal should this be necessary shall be determined by lot at the time of the selection of members of the Tribunal referred to in subsection (2).

Declaration by Members of the Diocesan Tribunal

17. (1) Before the first sitting of the Diocesan Tribunal each member thereof shall sign a declaration in the form contained in the third schedule to this Ordinance.
- (2) Should any member of the Tribunal refuse to sign the said declaration or be otherwise unable to act his place shall be filled by a reserve member of the Tribunal according to the order of selection determined pursuant to subsection (3) of section 16 of this Ordinance.

Notice of Hearing of Charge

18. The Bishop or Deputy President shall appoint a time and place for the hearing of the charge and shall cause notice thereof to be served on the respondent and on the person or persons making the charge.

Procedure for a Hearing by the Diocesan Tribunal

19. (1) The hearing before the Diocesan Tribunal shall be in camera provided however that the Tribunal may direct that the hearing be in public.
- (2) At the hearing the person or persons making the charge and the respondent may at his or their own cost appear by counsel solicitor or agent, provided however that where a charge is made by a person appointed by the Bishop the cost of his representation and any order for costs made against him by the Tribunal shall be a diocesan expense.
- (3) Except as specifically provided in this Ordinance the Diocesan Tribunal may hear and determine the charge in such manner in all respects as the Tribunal in its discretion thinks best suited for that purpose and may admit as evidence matter that is not in law admissible where in equity and good conscience it considers that the matter should be so admitted.
- (4) The Diocesan Tribunal shall have power generally to give all such directions including directions of an interlocutory nature and to do all such things as it deems necessary or expedient in the proceedings and without in any way limiting the foregoing may give directions upon such terms (if any) as it considers expedient relating to the trial of separate issues, the joinder of charges, the amendment of the charge or reply, discovery and inspection of documents, examination of witnesses and the place time and mode of hearing.
- (5) The Diocesan Tribunal may dismiss a charge or refrain from further hearing or from determining the matter if it appears that such matter is trivial or that in the public interest further proceedings by the Tribunal are not necessary or desirable.

- (6) The Diocesan Tribunal may resolve to proceed to hear and determine the charge or enquire into the circumstances of an offence notwithstanding the absence of any party thereto, and shall give to the Bishop its reasons for doing so.
- (7) If during the proceedings after the Diocesan Tribunal has met any member shall cease from any cause to attend it the proceedings may with the consent of all parties be continued before the remaining members thereof with a reserve member of the Tribunal according to the order of selection determined pursuant to subsection (3) of section 16 of this Ordinance in substitution for the member failing to attend. In the absence of such consent the proceedings shall be commenced do novo with the further selection of members of the Tribunal.
- (7A) The composition of the Diocesan Tribunal which has commenced to hear a charge shall, subject to sub-section (7) hereof, and unless a member shall die or resign, continue until the proceedings have been finally determined notwithstanding that a member of the Diocesan Tribunal may in the meantime cease to be a member of the panel of assessors.
- (8) The Diocesan Tribunal shall cause to be reduced to writing true copies of all statements used in evidence before it and the proceedings of the Tribunal.
- (9) The decision of the Diocesan Tribunal shall be that of the majority of the Tribunal.
- (10) In respect of a charge or any portion thereof which has been admitted in writing by the respondent the Diocesan Tribunal shall enquire into the circumstances of the offence and make such recommendation as to sentence in accordance with the provisions of section 60 of the Constitution of The Anglican Church of Australia as it thinks just in the circumstances.
- (11) In respect of a charge or any portion thereof which has been denied the Diocesan Tribunal shall proceed to hear and determine the charge and if it finds the charge or any portion thereof proved shall make such recommendation as to sentence in accordance with the provisions of section 60 of the Constitution of The Anglican Church of Australia as it thinks just in the circumstances.
- (12) The Diocesan Tribunal may make such order as to costs as it thinks fit and the amount of such costs may be recovered by action in any court of competent jurisdiction.

Evidence from Secular Courts or Tribunals

19A The Diocesan Tribunal in the course of its proceedings, may:-

- (a) receive in evidence a transcript of evidence taken in proceedings before a secular court, tribunal or other body constituted under the law of Australia, of any State or Territory of Australia or of another country, and may draw any conclusions of fact from the evidence which it considers proper; and
- (b) adopt, in its discretion if it considers proper, any finding, decision, judgment or reasons for judgment of any such secular court, tribunal or body which may be relevant to the proceedings.

Determination and Sentence

20. As soon as practicable after the Diocesan Tribunal shall have made its determination and any recommendation, the Bishop shall pronounce the determination and any sentence, and the respondent shall thereupon be served with a copy thereof under the hand and seal of the Bishop.

Appeal

21. An appeal shall lie from every determination and recommendation of the Diocesan Tribunal to the Appellate Tribunal constituted under the Constitution of The Anglican Church of Australia.

Costs

22. The reasonable costs and expenses of members of the Diocesan Tribunal shall be paid by the Synod in such amounts as the Diocesan Council shall determine.

Miscellaneous

23. (1) Any notice or other document required to be served shall in the case of the respondent or the person or persons making the charge be served by delivery of the same to him personally or by posting the same by prepaid certified mail to his last known address in South Australia or by leaving the same or by posting the same in manner aforesaid to such other address in South Australia as such person shall nominate in writing. In the case of the Bishop or the Secretary of Synod service shall be effected by leaving the same at or by posting the same in manner aforesaid to the Anglican Church Office at Adelaide. The date of service of any document shall in the case of personal service be the date on which it is delivered and in the case of service by post shall be the date upon which in the normal course of post the document would have been received by the person served.
- (2) If the time limited for any purpose mentioned in this Ordinance shall expire on a Sunday or public holiday such time shall be deemed to be extended to the day following.

THE FIRST SCHEDULE
(Section 8)

To the Most Reverend The Archbishop of Adelaide

I/WE

of

do hereby charge the Reverend

of _____ with having committed the ecclesiastical offence(s) of (here state the offence or offences charged)

1. The facts which it is alleged constitute the said offence are as follows:-
(Here set out in numbered paragraphs particulars of the facts alleged.)
2. The witnesses proposed to be called in support of such facts are:-
(Here set out the names and addresses of the witnesses to be called.)
3. Copies of the following documents are submitted in support of such charge:-
(Here list the documents (if any) submitted.)

AND I/WE desire that this charge be duly heard and I/we do solemnly and sincerely declare that I/we do not make this charge from any private ill-will towards the said _____ or with any view to my/our profit and I/we further declare and I/we believe the charge(s) laid to be true.

Signature(s)

Date

THE SECOND SCHEDULE
(Section 10)

IN THE MATTER of a charge against the Reverend

I _____ of

do solemnly undertake to attend as a witness and give evidence on any trial of the above matter before the Diocesan Tribunal.

Signed

Date

THE THIRD SCHEDULE
(Section 17)

IN THE MATTER of a charge against the Reverend

I _____ of

do solemnly and sincerely declare that I will well and truly hear and determine the charge in the above matter and that I will find according to the evidence to the best of my judgment and ability.

Signed

Date

Passed 17th September 1983.
Amended 28 July 1995, new Section 6A
Amended 29 May 1999, new Sections 8A, 19 (7A), 19A, Amendment of Section 9