

THE ECCLESIASTICAL OFFENCES ORDINANCE 2001

An Ordinance to Provide for the Constitution of the Diocesan Tribunal and for the trial of ecclesiastical offences.

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 tribunal and certain other matters pertaining to the trial of ecclesiastical offences NOW THE SYNOD HEREBY DETERMINES-

Title

1. This Ordinance may be cited as "The Ecclesiastical Offences Ordinance 2001".

General Synod Canons

2. The Special Tribunal Canon and the Board of Assessors 1962 (No. 3 of General Synod 1962) the Offences Canon 1962 (No. 4 of 1962) the Offences Amendment Canon 1981 (No. 7 of 1981) the Board of Assessors (Appellate Tribunal) Canon 1962 (No. 5 of 1962) the Tribunals Procedure Canon 1962 (No. 6 of 1962) the Appellate Tribunal Canon 1981 (No. 12 of 1981) and the Appellate Tribunal (Amendment) Canon 1981 (No. 17 of 1981) of the General Synod of The Anglican Church of Australia are hereby adopted.

Composition of Tribunal

3. In addition to the President or Deputy President as the case may be the Diocesan Tribunal shall consist of one priest and one layman selected in manner hereinafter provided from the panel of assessors hereinafter mentioned.

Panel of Assessors

4. The panel of assessors shall consist of
 - (1) (a) five Clergymen who have been in priests' orders for a period of not less than five years, and
 - (b) five Laymen who are either Lay Members of Synod or who are qualified to be elected as Lay Members of Synod.
 - (2) The provisions of The Elections and Appointments Ordinance 2001 shall apply to the panel of assessors provided however that any member of the panel selected for the 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.

Powers of Tribunal

5. 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 Section 1 of the Offences Canon 1962-1981 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 of 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.

Promotion of a Charge

6. Subject to the provisions of Section 54 of the Constitution of The Anglican Church of Australia a charge in respect of any matter over which the Diocesan Tribunal has jurisdiction may be promoted by a person appointed by the Bishop in accordance with the Rules of the General Synod of The Anglican Church in Australia relating to charges against a clerk under Section 54 of the Constitution or by any five adult communicants resident within the Diocese.

Racial & Sexual Abuse

7. 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) Racial abuse or harassment; and
 - (2) Sexual abuse or harassment.

Criminal Offence Sec 8 Amended 2002

8. (1) If in relation to the subject of a charge, a clergyman 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 clergyman from his or 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 Diocesan Council shall determine whether the suspension shall be with or without payment of stipend. If a stipend is to be paid to the clergyman during the period of suspension, then the cost shall (unless otherwise determined) be met by the Parish or agency of the Synod for a 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 clergyman has been suspended from office and duties by the Bishop 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."

Procedure of Tribunal

9. (1) Subject to Section 8 a charge shall be in writing in the form contained in the first schedule hereto 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) proposed to be called in support of such facts.
 - (d) be accompanied by copies of any documents relevant to the charge.
- (2) The charge shall be lodged at the Diocesan Registry in triplicate.
- (3) The charge shall be deemed to have been made when it is lodged in the Diocesan Registry.

Examination of Charge by the Bishop

10. Upon lodgement of the charge the Bishop shall examine the same and shall determine whether in his opinion the charge is stated with sufficient fullness or precision or is deficient in substance or in form and may from time to time require the person or persons making the charge to amend it in such particulars as he shall determine. No further proceedings shall be taken until such amendments have been made.

Reference to Board of Enquiry

11. When the Bishop has certified that the charge is in order
 - (a) He shall refer the charge to a Board of Enquiry constituted as hereinafter provided.
 - (b) The Registrar 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 within a time to be specified in such request.
 - (c) The Diocesan Council shall within one month appoint a Board of Enquiry pursuant to the provisions of Section 12 hereof.

Composition of Board

12. A Board of Enquiry shall consist of the Registrar (who shall be the Chairman thereof) and one Clergyman and one Lay Member of Synod provided however that no member of the panel of assessors shall be eligible for election to a Board of Enquiry.

Term of Office

13. A Board of Enquiry shall remain in office until it has reported in accordance with the provisions of Section 16 hereof and shall be deemed to be a board of enquiry for the purposes of Section 54 of the Constitution of The Anglican Church of Australia.

Meetings and Procedure of the Board

14. The Registrar 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 a second schedule hereto. 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.

Proceedings to be in Camera

15. 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.

Report to the Bishop

16. At the conclusion of its enquiry the Board shall report in writing to the Bishop whether in its opinion there is sufficient evidence for the charge to be heard by the Diocesan Tribunal.

Insufficient evidence

17. If the report of the Board discloses that there is insufficient evidence for the charge 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.

Respondent to answer charge

18. If the report of the Board discloses that there is sufficient evidence for the charge or any portion thereof to be heard by the Diocesan Tribunal, the Bishop shall forthwith serve notice on the respondent enquiring whether he admits the charge. If the respondent within fourteen days of the service of such notice shall not in writing 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.

Report to Tribunal

19. If the report of the Board discloses that there is sufficient evidence for the charge to be heard by the Diocesan Tribunal the Board shall forward to the Bishop for submission to the Tribunal all documents and statements in writing of witnesses considered by the Board in reaching its determination.

Notice of Hearing

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

Composition of Tribunal

21. (1) In the case of a charge made by a person appointed by the Bishop the Diocesan Tribunal shall comprise a Deputy President appointed by the Bishop and two members of the panel of assessors selected in manner hereinafter provided.
- (2) In the case of any other hearing the Diocesan Tribunal shall comprise the Bishop as President or a Deputy President appointed by him and two members of the panel of assessors selected in manner hereinafter provided.

Selection of Tribunal

22. The selection of members of the Diocesan Tribunal shall be made in manner following that is to say-
 - (a) There shall be struck off from the panel of assessors the name of any member thereof who is a person making the charge, a witness named in the charge, the respondent, or a person who for the purposes of the hearing has been appointed Deputy President of the Tribunal by the Bishop.
 - (b) The names of the remaining Clergymen members of the panel written on separate pieces of paper shall then be placed in a box and shaken and the Registrar shall draw out one piece of paper and the person named thereon shall be the priest member of the tribunal.
 - (c) The layman member of the tribunal shall be selected in like manner from the names of the remaining laymen members of the panel.

Declaration to be signed

23. (1) After the selection as aforesaid and before the first sitting of the Diocesan Tribunal each member thereof shall sign a declaration in the form contained in the third schedule hereto.
- (2) Should any member of the Tribunal refuse to sign the said declaration or be otherwise unable to act his place shall be filled in manner provided by Section 22 of this Ordinance.

Arrangements for Hearing

24. The President or Deputy President as the case may be of the Tribunal shall appoint a time and place for the hearing of the charge and shall cause notice thereof to be served on the person or persons making the charge and on the respondent.

Denied Charge

25. 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 proved shall make sure 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.

Admitted Charge

26. 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.

Costs

27. 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 shall be a diocesan expense and provided also that if the charge shall be not proved the Tribunal may order the payment to the respondent of such costs as it shall determine and any such costs shall be a diocesan expense.

Hearing to be in camera

28. The hearing before the Diocesan Tribunal shall be in camera provided however that the Tribunal may and on the application of the respondent shall direct that the hearing be in public.

Vacation of Membership of Tribunal

29. If during the proceedings after the 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 one further member of the panel of assessors selected in manner provided by Section 22 of this Ordinance in substitution for the member failing to attend. In the absence of such consent the proceedings shall be commenced de novo with the further selection of members of the Tribunal.

Majority Decision

30. The decision of the Tribunal shall be that of the majority of the Tribunal.

Powers of the Tribunal

31. (1) 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.
- (2) 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.

Proceedings in absence of any party

32. The Diocesan Tribunal may proceed to hear and determine the charge or enquire into the circumstances of an offence in the absence of any party thereto and 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.

Evidence and proceedings to be in writing

33. The Tribunal shall cause to be reduced to writing true copies of all statements used in evidence before it and the proceedings of the Tribunal.

Chancellor may take part in proceedings

34. In the exercise of any powers under the provisions of this Ordinance the Bishop and the Diocesan Tribunal (if the Chancellor is not a member thereof) may seek advice and assistance of the Chancellor and for that purpose the Chancellor may sit with and take part in the proceedings of the Tribunal.

Use of Evidence from Secular Court

- 34(a) The Diocesan Tribunal in the course of its proceeding, 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.

Pronouncement of Sentence

35. The Bishop as soon as practicable after the Diocesan Tribunal shall have made its findings shall pronounce the sentence (if required) and the respondent shall thereupon be served with a copy thereof under the hand and seal of the Bishop.

No appeal allowed for defects

36. Subject to the provisions of the Constitution of The Anglican Church of Australia there shall not be any appeal for mere error, a defect in form in any proceedings or in the verdict or sentence.

Appeal to Appellate Tribunal

37. Subject to the provisions of Section 36 of this Ordinance an appeal shall lie from every determination of the Diocesan Tribunal to the Appellate Tribunal constituted under the Constitution of The Anglican Church of Australia.

Synod to pay expenses

38. 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.

Serving of Notices

39. 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 as such person shall nominate in writing. In the case of the Bishop or Registrar service shall be effected by leaving the same at or by posting the same in manner aforesaid to the Diocesan Registry. 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.

Extension of Time Limit

40. 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.

Notice of Appeal

41. Any notice of appeal to the Diocesan Tribunal pursuant to Section 48 (2) of The Parochial Administration Ordinance 2001 shall be served on the Registrar who shall thereupon proceed with the selection of members of the Tribunal in accordance with the provisions of Section 22 of this Ordinance and the hearing of the appeal shall proceed in accordance with the provisions of this Ordinance.

THE FIRST SCHEDULE
(Section 8)

To The Right Reverend The Bishop of The Murray-
I/We..... of

..... do hereby charge
the Rev'd..... of
that he has committed the ecclesiastical offence(s) of
(here state the offence or offences charged)

1. The facts which it is alleged constitute the said offence(s) 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 own profit and I/we further declare that I/we believe the charge(s) laid to be substantially true.

Signature(s)
.....
Date

THE SECOND SCHEDULE
(Section 13)

IN THE MATTER of the Reverend
I of do

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

Signed
Date

THE THIRD SCHEDULE
(Section 23)

IN THE MATTER of 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