



# Anglican Church Diocese of Sydney

St Andrew's House  
Sydney Square  
New South Wales  
Australia

PO Box Q190  
QVB Post Office NSW 1230

Telephone: 61 2 9265 1555

Facsimile: 61 2 9261 4485

## Change in qualification to be and to remain a churchwarden – 17 December 2001

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### 1. Introduction

The qualifications for a person being elected or appointed as a churchwarden and remaining a churchwarden are set out in the [Church Administration Ordinance 1990](#) (CAO).

Currently a person who is engaged on a full-time paid basis and who is paid from the funds of the parish or church may not be appointed or elected as a churchwarden (clause 22(4)). However, having been appointed or elected, the office of a churchwarden does not become vacant by reason of the churchwarden subsequently being engaged on a full-time basis and paid from the funds of the parish or church.

At its meeting in November 2001, the Standing Committee reviewed the entitlement of a person who is paid by the parish or church to become and to remain a churchwarden. As a consequence of this review the Standing Committee amended clause 22(4) and inserted a new clause 25(1)(a)(v) in the CAO.

A copy of the amended CAO is enclosed with this circular.

### 2. What will change?

The amendment to clause 22(4) means that a person who is engaged as an employee and who is paid from the funds of the parish or church may not be appointed or elected as a churchwarden. This differs from the previous form of clause in 2 important respects, namely:

- (a) The amended clause only precludes a person who is engaged as an employee from being appointed or elected as a churchwarden. It does not preclude a person who is engaged in some other capacity, including as an independent contractor, from being appointed or elected as a churchwarden.
- (b) The amended clause is not limited to persons who are employed on a full-time basis. An employee is precluded from being appointed or elected as a churchwarden regardless of whether the employment is full-time or part-time or is permanent, fixed term or casual etc.

The new clause 25(1)(a)(v) provides, as a consequential change, that the office of a churchwarden becomes vacant if the churchwarden becomes engaged as an employee who is paid from the funds of the parish or church.

### 3. Distinction between employees and independent contractors

The distinction between whether a person is an employee or an independent contractor is not always easy to make. However in general an employment relationship is essentially one in which the employer is able to control all aspects of the employee's work including what, how, when and where the work is to be

performed. The more control that can be exerted over how work is performed, the more likely the relationship will be considered one of employment rather than one with an independent contractor.

In the parish context, a person will usually be an employee if he or she is engaged in paid work such as an office secretary or administrator, a lay minister/worker, a youth worker, or a student minister/catechist. A person will usually be an independent contractor if he or she is engaged and paid as a tradesperson (other than an employed caretaker/cleaner) or as a professional advisor such as an architect, solicitor or accountant etc. Other types of work are less able to be generally characterised (eg. music directors, organists, vergers).

#### **4. When do these changes take effect?**

The amendments to clause 22(4) take effect from 20 November 2001. Accordingly the new qualifications to become a churchwardens will apply to the appointment and election of churchwardens after 20 November 2001, including for the purposes of annual vestry meetings held in 2002.

The new clause 25(1)(a)(v) takes effect from 1 April 2002. This means that a person who is a churchwarden but who, before 1 April 2002, becomes engaged as an employee who is paid from the funds of the parish or church will not for that reason cease to be a churchwarden.

#### **5. Finally**

Please contact me on 9265 1671 or at [rjw@sydney.anglican.asn.au](mailto:rjw@sydney.anglican.asn.au) if you have any questions in relation to this circular.

ROBERT WICKS  
Legal Officer