

Church Discipline Ordinance 1996

(Reprinted under the Interpretation Ordinance 1985.)

The Church Discipline Ordinance 1996 as amended by the Miscellaneous Amendments Ordinance 2001.

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Long Title

An Ordinance to provide a means for disciplining persons who fail to meet the standards of behaviour expected of ministers and persons holding positions in this church.

Preamble

The Synod of Diocese of Sydney Ordains -

Name

1. This Ordinance is the Church Discipline Ordinance 1996.

Definitions

2. (1) In this ordinance -

“Allegations” means allegations that a person has engaged in Unacceptable Behaviour and includes facts and circumstances that are not in dispute.

“Disable Person” has the same meaning as in Rule 8 of Part 1 of the Supreme Court Rules 1970.

“Experienced Lawyer” means -

- (a) a judge or justice of an Australian Court or Tribunal; or
- (b) a person who has been admitted as a legal practitioner for at least 10 years.

“Injured Party” means a person -

- (a) who has been the subject of;
- (b) who claims to have been the subject of; or
- (c) in the case of a person who is a Disable Person, whose Representative claims has been the subject of,

the Unacceptable Behaviour of a person being a Licensed Minister or an Other Person.

“Licensed Minister” means a person who holds a licence to which the 21st Constitution applies.

“Other Person” means a person who -

- (a) is not a Licensed Minister; and
- (b) holds a Position.

“Position” means each of the following -

- (a) an office in the Diocese;
- (b) membership of a body corporate incorporated by or under the Bodies Corporate Act;
- (c) churchwarden of a church in the Diocese;
- (d) membership of a parish council constituted under the Church Administration Ordinance 1990;
- (e) membership of any other board, council or committee constituted by ordinance or resolution of the Synod or of the Standing Committee or of a parish council;

- (f) an officer specified in part 6 of the Church Administration Ordinance 1990;
- (g) an appointment by a rector, curate in charge, churchwarden or parish council;
- (h) any other position of leadership within the Diocese.

“Prohibition” means an order made by the Archbishop under clause 10(1).

“Representative” means, in relation to a Disable Person,-

- (a) a parent or guardian of the Disable Person;
- (b) the person responsible for the welfare of the Disable Person or otherwise acting on behalf of the Disable Person; or
- (c) where there are 2 or more persons responsible for the welfare of the Disable Person, any one or more of those persons.

“Report” means a report of an Experienced Lawyer under clause 4(3).

“Resignation” means -

- (a) in relation to a Licensed Minister, a request to the Archbishop for the revocation of each licence held by that person to which the 21st Constitution applies and written notice of resignation from every other Position held by that person; and
- (b) in relation to an Other Person, written notice of resignation from every Position held by the relevant person.

“Subject” means a Licensed Minister or Other Person -

- (a) who is believed to have; or
- (b) who is accused of having,

engaged in Unacceptable Behaviour.

“Tribunal” means a tribunal appointed under this Ordinance.

“Unacceptable Behaviour” means -

- (a) in the case of an Ordained Person - sexual conduct after ordination which would be regarded by right thinking members of the Church as disgraceful and inconsistent with the standards to be observed by a Christian minister;
- (b) in the case of a person who is not ordained - sexual conduct while holding a Position which would be regarded by right thinking members of the Church as disgraceful and inconsistent with the standards which should be observed by a Christian lay person holding such a Position; and
- (c) any threat, intimidation or inducement made by or at the direction or with the consent of a Subject intended -
 - (i) to persuade another person from making a complaint to the Archbishop about Unacceptable Behaviour of the type referred to in paragraphs (a) or (b) of this definition by the Subject;
 - (ii) to persuade any person who has made an Allegation to withdraw the Allegation; or
 - (iii) to persuade an Injured Party, or in the case of an Injured Party who is a Disable Person a Representative of the Disable Person, to consent to the withdrawal of the Allegation.

(2) Nothing in this Ordinance restricts any right which the employer of a Subject may have to terminate that employment.

Investigation

3. (1) If the Archbishop -
- (a) receives a complaint that a person, being a Licensed Minister or an Other Person, has engaged in Unacceptable Behaviour; or
 - (b) knows or reasonably suspects that a person, being a Licensed Minister or an Other Person, has engaged in Unacceptable Behaviour which, if substantiated before a Tribunal, would in the opinion of the Archbishop be likely to result in the Tribunal making a recommendation in terms of clause 7(1)(b) or (c),

then the Archbishop must promptly appoint a person or persons to investigate the Allegations.

- (2) The person or persons appointed by the Archbishop to carry out an investigation under clause 3(1) -
 - (a) must carry out the investigation promptly;

- (b) may require an Injured Party who is competent to do so to verify the Allegations by statutory declaration; and
- (c) must notify the Subject of the nature of the Allegations.

(3) The Archbishop is not obliged to appoint a person or persons to investigate the Allegations or part of the Allegations and may revoke the appointment of any person or persons so appointed in any one or more of the following circumstances -

- (a) if the Archbishop considers that the Allegations, or part, are frivolous, vexatious or not made in good faith;
- (b) if the Archbishop considers that the subject matter of the Allegations, or part, is trivial;
- (c) where the subject matter of the Allegations, or part, is under investigation by some other competent person or body or is the subject of legal proceedings;
- (d) where a person making a complaint or the Injured Party, or both, has failed without sufficient reason to provide further particulars of the Allegations, or part, or verify the Allegations by statutory declaration to the person appointed by the Archbishop to investigate the Allegations;
- (e) where the Subject has resigned;
- (f) where the Archbishop is requested by each known Injured Party, or where the Injured Party is a Disable Person a Representative of that Injured Party, not to commence or continue an investigation.

Experienced Lawyer

4. (1) After any investigation required by clause 3 has been completed, the Archbishop must appoint an Experienced Lawyer and must-

- (a) notify the Experienced Lawyer in writing of the identity of the Subject;
- (b) notify the Subject of the identity of the Experienced Lawyer;
- (c) notify the Experienced Lawyer and Subject of all Allegations and material relevant to the Allegations concerning the Subject;
- (d) invite the Subject, within 28 days, to provide any material relevant to the Allegations and make any written representations to the Experienced Lawyer; and
- (e) request from the Experienced Lawyer a report under clause 4(3).

(2) The Experienced Lawyer may require an Injured Party who is competent to do so to verify the Allegations by statutory declaration.

(3) Within 42 days of receiving notification under clause 4(1)(c), or such longer period as the Archbishop may allow at the request of the Experienced Lawyer, the Experienced Lawyer must report to the Archbishop in writing as to -

- (a) whether there is prima facie evidence of the Subject having engaged in Unacceptable Behaviour or committed an offence or offences for which a charge could be brought under the Tribunal Ordinance 1962; and
- (b) if there is prima facie evidence of the Subject having engaged in Unacceptable Behaviour or committed an offence or offences for which a charge could be brought under the Tribunal Ordinance 1962 -
 - (i) the particulars of the Unacceptable Behaviour or the offence or offences; and
 - (ii) whether having regard to all the evidence a Tribunal is not likely to find that the Subject engaged in Unacceptable Behaviour and a Tribunal constituted under the Tribunal Ordinance 1962 is not likely to find the Subject guilty of the offence or offences.

(4) On receiving the Report, the Archbishop must notify the Subject of the contents of the report.

(5) If the Report states that -

- (a) there is prima facie evidence of the Subject having engaged in Unacceptable Behaviour, but
- (b) having regard to all the evidence a Tribunal is not likely to find that the Subject engaged in Unacceptable Behaviour,

the Archbishop may but need not act under clause 5.

(6) If the Report states that -

- (a) there is prima facie evidence of the Subject having committed an offence or offences for which a charge could be brought under the Tribunal Ordinance 1962, but
- (b) having regard to all the evidence a Tribunal constituted under the Tribunal Ordinance is not likely to find the Subject guilty of an offence or offences,

the Archbishop may but need not take further action.

(7) If the Report states that there is prima facie evidence as set out in clauses 4(5)(a) or (6)(a) but does not include the opinions referred to in clauses 4(5)(b) or (6)(b) the Archbishop must -

- (a) promote a charge against the Subject under the Tribunal Ordinance 1962; or
- (b) refer the matter to a Tribunal appointed under this Ordinance.

Tribunal

5. (1) If the Archbishop decides to act pursuant to this clause, he must -

- (a) appoint a Tribunal;
- (b) notify the Subject and each Injured Party whose identity is known to the Archbishop of such appointment; and
- (c) provide the Tribunal and the Subject with particulars of all Allegations known to the Archbishop concerning the Subject and which the Tribunal is to investigate.

(2) A Tribunal comprises 3 persons appointed by the Archbishop who collectively satisfy the requirements of clause 5(3).

(3) A Tribunal must include -

- (a) an Experienced Lawyer not being the Experienced Lawyer referred to in clause 4;
- (b) a person who is or has been a Licensed Minister for a term or terms in aggregate of at least 10 years; and
- (c) at least one man and one woman.

6. (1) Subject to clause 6(2) a Tribunal must investigate the Allegations referred to it and all other Allegations which come to its attention in the course of that investigation.

(2) A Tribunal is not required to investigate an Allegation, or part of an Allegation, while the Allegation, or part, is under active investigation by some other competent person or body or is the subject of legal proceedings.

(3) In carrying out an investigation the Tribunal must observe the rules of procedural fairness.

(4) If at the commencement of, or during the conduct of, an investigation the Tribunal forms the opinion that there is prima facie evidence of the Subject having engaged in Unacceptable Behaviour and the Subject denies one or more of the facts alleged to constitute Unacceptable Behaviour, the Tribunal must conduct a hearing. If the Tribunal conducts a hearing it may receive evidence, examine witnesses and administer oaths to witnesses.

(5) The Archbishop may appoint an additional Experienced Lawyer to assist the Tribunal and the Tribunal may appoint an additional Experienced Lawyer to assist it if the Archbishop has not done so. If the Tribunal conducts a hearing in respect of an Allegation, any Experienced Lawyer so appointed must act independently of the Tribunal in respect of that Allegation.

(6) The Subject to whom the Allegations relate is entitled to make representations to the Tribunal.

(7) Each Injured Party named in the Allegations (or if an Injured Party is a Disable Person, a Representative of the Injured Party), with the leave of the Tribunal may make representations to the Tribunal.

(8) No person entitled to make representations to a Tribunal is entitled to be represented by another person who is not a legal practitioner without the leave of the Tribunal.

(9) The Tribunal may discontinue a hearing if it is of the opinion that there are circumstances which prevent the Subject from receiving a fair hearing.

7. (1) If the Tribunal determines that the Subject has engaged in Unacceptable Behaviour it must recommend to the Archbishop any one or more of the following -

- (a) that no further action be taken by him in relation to the Allegations;
- (b) that, in the case of a Licensed Minister, the licence of that person -
 - (i) be suspended, the term of the suspension and any conditions to be applicable to the suspension; or
 - (ii) be revoked,

and a Prohibition be issued, the term of the Prohibition and any limitations to be included in the Prohibition;

- (c) that, in the case of an Other Person, a Prohibition be issued, the term of the Prohibition and any limitations to be included in the Prohibition.

(2) The Tribunal may make other recommendations to the Archbishop.

(3) In determining whether a Subject has engaged in Unacceptable Behaviour the Tribunal may inform itself on any matter in such manner as it thinks fit provided that it only acts on facts that are reasonably probative of the facts in issue.

- (4) Any determination and recommendation of the Tribunal must be contained in a report which -
- (a) sets out the Tribunal's findings on material questions of fact;
 - (b) refers to any evidence or other material on which the Tribunal's findings are based; and
 - (c) gives reasons for the Tribunal's determination.

8. If after any Allegations have been received by the Archbishop and before a Tribunal begins its investigation the Subject, being a Licensed Minister, requests the Archbishop to promote a charge against the Subject under the Tribunal Ordinance 1962, then -

- (a) the Tribunal is discharged;
- (b) the Archbishop must promptly promote the charge;
- (c) clause 5 of the Tribunal Ordinance 1962 does not apply; and
- (d) the Subject is taken to have accepted the jurisdiction of the Tribunal whenever the alleged Unacceptable Behaviour may have occurred.

9. (1) If a Tribunal recommends to the Archbishop that the licence of a Licensed Minister be suspended or revoked, the Archbishop -

- (a) must invite that person to show cause why the licence of that person should not be suspended or revoked, as the case may be; and
- (b) thereafter -
 - (i) subject to clause 9(2), may suspend that licence for such term and upon such conditions as the Archbishop may determine; or
 - (ii) may revoke that licence.

(2) If a Tribunal recommends that the licence of a Licensed Minister be suspended and also a term for the suspension or any conditions to be applicable to the suspension -

- (a) the Archbishop may not suspend the licence for a longer term; and
- (b) the suspension must be subject to the recommended conditions in addition to any conditions which the Archbishop may impose.

Prohibitions

10. (1) In the cases provided for in this ordinance the Archbishop may forbid a person from holding a Position.

- (2) A Prohibition may be -
- (a) for a specified term;
 - (b) indefinite; or
 - (c) limited to specific Positions or in respect of all Positions;

and may be revoked by the Archbishop at any time.

(3) If a Tribunal recommends in relation to a Subject that a Prohibition be issued and also a term for the Prohibition or any limitations to be included in the Prohibition, then if the Archbishop imposes a Prohibition -

- (a) the Archbishop may not issue a Prohibition for a longer term; and
- (b) the Prohibition must include the recommended limitations in addition to any other limitations which he may include on the ambit of the Prohibition.

(4) Prior to deciding whether or not to impose a Prohibition under this clause, the Archbishop must invite the person to be the subject of the Prohibition to show cause why the Prohibition should not be imposed.

(5) A person is not eligible to be appointed to a Position if that person is the subject of a Prohibition which forbids a person from holding that Position.

(6) A person who holds a Position is taken to vacate office if that person becomes the subject of a Prohibition which forbids that person from holding that Position.

Suspension

11. (1) If the Subject, being a Licensed Minister, is charged with a criminal offence and the allegations giving rise to the criminal charge are sufficient, in the Archbishop's opinion, to constitute Allegations of Unacceptable Behaviour, the Archbishop with the consent of the Standing Committee, may suspend the licence of the Subject.

- (2) If the Archbishop is required to act under clause 5(1) and the Subject is a Licensed Minister the Archbishop, with the consent of the Standing Committee, may do either or both of the following -
- (a) suspend the licence of the Subject;
 - (b) issue a Prohibition to expire -
 - (i) if the Tribunal makes a recommendation under clause 7(1)(a) - on receipt by the Archbishop of the Tribunal's report;
 - (ii) if the Tribunal makes a recommendation under clause 7(1)(b) that the Subject's licence be revoked - at the time the Archbishop decides whether to revoke the licence;
 - (iii) if the Tribunal makes a recommendation under clause 7(1)(c) that a Prohibition be issued in relation to the Subject - at the time the Archbishop decides whether to issue the Prohibition; and
 - (iv) if the Tribunal makes a recommendation under clause 7(1)(b) that the Subject's licence be revoked and a recommendation under clause 7(1)(c) that a Prohibition be issued - the last to occur of the time the Archbishop decides whether to revoke the licence and the time the Archbishop decides whether to issue the Prohibition.
- (3) Prior to taking any action under clause 11(1), 11(2)(a) or 11(2)(b), the Archbishop must invite the Subject to show cause why that action should not be taken.
- (4) During the period of suspension or Prohibition referred to in clause 11(1) or 11(2), the Subject is entitled to whatever stipend, salary, allowances and other emoluments that the Subject would have been entitled to but for such suspension or Prohibition. In the case of a Subject licensed to or employed by a parochial unit, the cost of providing such stipend, salary, allowances and other emoluments shall be paid, or reimbursed, from funds under the control of the Synod.

Withdrawal

12. (1) Subject to clause 12(2), a person who has made an Allegation may withdraw the Allegation at any time by written notice to that effect to the Archbishop.
- (2) If an Allegation involves an Injured Party whose identity is known to the Archbishop, the Allegation may be withdrawn under clause 12(1) only with the written consent of each Injured Party or in the case of a Disable Person, a Representative of the Disable Person.

Table of Amendments

Clause 2 Amended by Ordinance No 32, 2001.

ROBERT WICKS
Legal Officer

MARK PAYNE
Diocesan Secretary

22 August 2001