

# Discipline Amendment Ordinance 2014

No 33, 2014

## Long Title

An Ordinance to amend certain ordinances to facilitate the notification of findings to the Office of the Children's Guardian NSW, establish a new process for the handling of complaints made against unpaid church workers and for other incidental matters.

The Synod of the Diocese of Sydney Ordains as follows.

### 1. Name

This Ordinance is the Discipline Amendment Ordinance 2014.

### 2. Amendment to the Discipline Ordinance 2006

The Discipline Ordinance 2006 (the "Principal Ordinance") is amended as shown in Schedule A by deleting the matter struck through and inserting the matter which is shown in underlined lettering.

### 3. Amendments to the Discipline Ordinance 2006 Amendment Ordinance 2013

The Discipline Ordinance 2006 Amendment Ordinance 2013 is amended by omitting subclause 4(2).

### 4. Amendments to the Offences Ordinance 1962

The Offences Ordinance 1962 is amended as follows –

- (a) insert the following new paragraphs (d), (e) and (f) in subclause 3(1) –
  - “(d) Grooming.
  - (e) Inappropriate pastoral conduct involving a child.
  - (f) Possession, production or distribution of child exploitation material.”, and
- (b) insert the following new paragraphs (i), (j) and (k) in subclause 3(2) –
  - “(i) Grooming.
  - (j) Inappropriate pastoral conduct involving a child.
  - (k) Possession, production or distribution of child exploitation material.”, and
- (c) in clause 3(3) omit the words “and child abuse” and insert instead the matter ‘, “child abuse”, “grooming”, “inappropriate pastoral conduct involving a child” and “child exploitation material”’.

### 5. Amendments to the Relinquishment of Holy Orders Ordinance 1994

The Relinquishment of Holy Orders Ordinance 1994 is amended by -

- (a) inserting the following words at the end of clause 2(1) before the full-stop –

“, subject to such notice being accompanied by a statement setting out any conduct committed by the person that may constitute an offence under clause 4 of the Discipline Ordinance 2006”, and
- (b) inserting a new clause 2B as follows –

“2B. If the Archbishop has reason to believe that a person who makes a request under clause 2 may have committed sexual misconduct against, with or in the presence of a child, including grooming of a child, or any serious physical assault of a child, he must inform the Director of Professional Standards and provide him with any relevant evidence so as to allow the Director to determine if a complaint should be made against the person under the Discipline Ordinance 2006 or any other action be taken in respect to the person.”

### 6. Savings and transitional provisions

- (1) Subject to subclause (2), nothing in this Ordinance affects any action taken under any of the ordinances amended by this Ordinance before the date of assent to this Ordinance.

## Discipline Amendment Ordinance 2014

(2) The amendments made by this Ordinance apply to complaints made after the date of assent to this Ordinance and to complaints made prior to such date of assent which have not been finally dealt with under the Principal Ordinance.

### 7. Commencement

This Ordinance commences on the date of assent.

## Schedule A

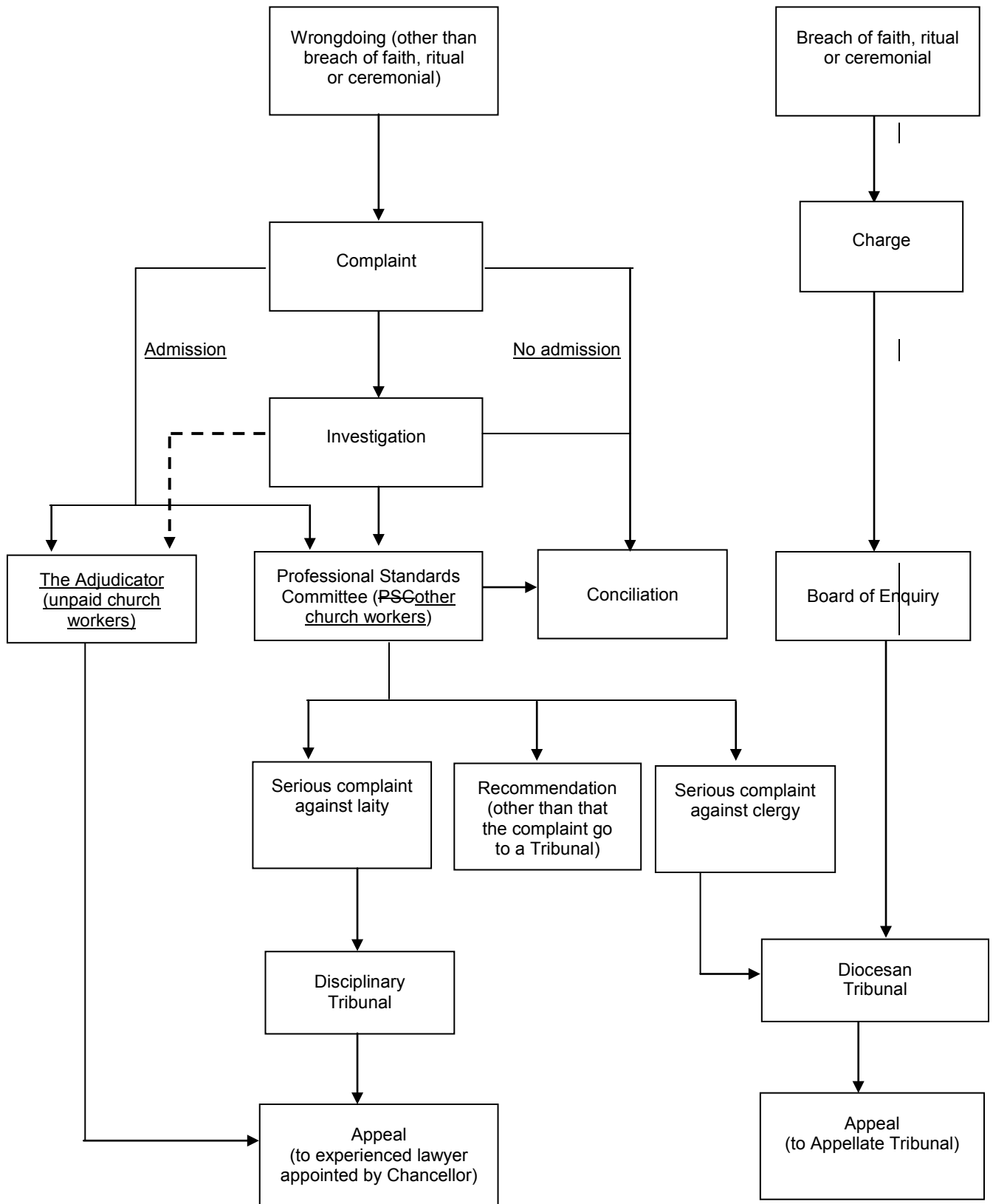
### Discipline Ordinance 2006

#### Table of Provisions

|                   |  |
|-------------------|--|
| Chapter 1         | Preliminary  |
| Chapter 2         | Wrongdoing by church workers (other than breaches of faith, ritual and ceremonial) <ul style="list-style-type: none"><li>Part 1 Complaints</li><li>Part 2 Investigation and assessment of complaints</li><li>Part 3 Suspension and prohibition orders</li><li>Part 4 Reference of complaints to the PSC</li><li>Part 5 Costs of responding to a complaint</li></ul>  |
| Chapter 3         | Conciliation of complaints   |
| <u>Chapter 4</u>  | <u>The Adjudicator</u>   |
| <u>Chapter 45</u> | The Tribunals <ul style="list-style-type: none"><li>Part 1 Introductory<ul style="list-style-type: none"><li><i>Division 1 Jurisdiction of the Tribunals</i></li><li><i>Division 2 Charges</i></li><li><i>Division 3 Proceedings before the Tribunals</i></li></ul></li><li>Part 2 Review of the decision of a Tribunal<ul style="list-style-type: none"><li><i>Division 1 The Diocesan Tribunal</i></li><li><i>Division 2 The Disciplinary Tribunal</i></li></ul></li></ul> |
| <u>Chapter 56</u> | Breaches of faith, ritual and ceremonial <ul style="list-style-type: none"><li>Part 1 Charges</li><li>Part 2 The Board of Enquiry</li></ul>  |
| <u>Chapter 67</u> | Exempt conduct   |
| <u>Chapter 78</u> | Miscellaneous  |
| <u>Chapter 89</u> | Administration <ul style="list-style-type: none"><li>Part 1 The Director</li><li>Part 2 Professional Standards Committee</li><li>Part 3 The Diocesan Tribunal</li><li>Part 4 The Disciplinary Tribunal</li><li>Part 5 Board of Enquiry</li></ul>   |
| Schedules         | Forms of charges before the Tribunals  |

**Discipline Amendment Ordinance 2014**

**Diagrammatic Summary of Provisions**



## Discipline Amendment Ordinance 2014

### Long title

An Ordinance to make provision with respect to the standard of conduct and the discipline of church workers.

The Synod of the Diocese of Sydney ordains as follows.

### CHAPTER 1 PRELIMINARY

#### 1. Name

This Ordinance is the *Discipline Ordinance 2006*.

#### 2. Definitions

In this Ordinance –

**Adjudicator** means a person appointed under clause 44.

**Appellate Tribunal** means the Appellate Tribunal constituted by and under Chapter IX of the 1961 Constitution.

**Archbishop** means the Archbishop of the Diocese or, in his absence, his Commissary or, if the See is vacant, the Administrator of the Diocese.

**Board of Enquiry** means the Board of Enquiry appointed under this Ordinance.

**ceremonial** has the same meaning as in the 1961 Constitution.

**Note:** Under section 74(1) of the 1961 Constitution, ceremonial includes ceremonial according to the use of this Church, and also the obligation to abide by such use.

**charge** means a charge under the 1961 Constitution or a charge under this Ordinance.

**child** means a person under the age of 18 years.

**child exploitation material** has the same meaning as in *Faithfulness in Service*.

**chief executive officer** of an organisation constituted by an ordinance of the Synod or the Standing Committee means the person who is responsible to the governing body of the organisation for the work of the organisation.

**child abuse** has the same meaning as in *Faithfulness in Service*.

**Note:** In *Faithfulness in Service*, child abuse means the following conduct in relation to a child –

- *bullying*
- *emotional abuse*
- *harassment*
- *neglect*
- *physical abuse*
- *sexual abuse, or*
- *spiritual abuse.*

*Each of these components of child abuse is further defined in Faithfulness in Service.*

**church authority** means the Archbishop or a person or body having administrative authority of or in a church body to license, appoint, authorise, dismiss or suspend a church worker.

**church body** includes a parish, school, any body corporate, organisation or association that exercises ministry within, or on behalf of, this Church in this Diocese.

**church worker** means a person who –

- (a) is or has been a member of the clergy, or
- (b) holds or has held any position of leadership within the Diocese and without limiting the generality of the foregoing a position of leadership includes –

## Discipline Amendment Ordinance 2014

- (i) an office, or
- (ii) membership of a body incorporated by or under the Bodies Corporate Act, or
- (iii) ~~a churchwarden~~ warden, or
- (iv) membership of a parish council, or
- (v) membership of any other board, council or committee established by the Synod, the Standing Committee, a regional council or a parish council, or
- (vi) a chief executive officer of an organisation constituted by an ordinance of the Synod or the Standing Committee, or
- (vii) an officer of the kinds specified in ~~part 6 of the Church Administration Ordinance 1990~~ the Parish Administration Ordinance 2008, or
- (viii) an appointment by a rector, a curate-in-charge, churchwarden or parish council or by any delegate or agent of such a person or body of persons,

but excludes a bishop who is subject to the jurisdiction of the Special Tribunal.

**Diocesan Tribunal** means the Diocesan Tribunal constituted for the Diocese in accordance with Chapter IX of the 1961 Constitution and Part 3 of Chapter ~~89~~ of this Ordinance.

**Director** means the person appointed for the time being under clause ~~404~~ 111.

**disciplinary action** includes a sentence as referred to in Chapter IX of the 1961 Constitution.

**Disciplinary Tribunal** means a Tribunal constituted in accordance with Part 4 of Chapter ~~89~~.

**discipline** has the same meaning as in the 1961 Constitution.

**Note:** Under section 74(9) of the 1961 Constitution, in the context of a charge for a breach of discipline in respect of a person in Holy Orders licensed by the Archbishop or resident in the Diocese, discipline means –

- the obligations in the ordinal undertaken by the person, and
- the ordinances in force in the Diocese.

**doctrine** has the same meaning as in the 1961 Constitution.

**Note:** Under section 74(1) of the 1961 Constitution, doctrine means the teaching of this Church on any question of faith.

**elected member** of the Board of Enquiry means a member of the Board of Enquiry elected under clause ~~426~~ 136 or appointed under clause ~~430~~ 140 to fill a vacancy in the office of a member elected under clause ~~426~~ 136.

**elected member** of the Diocesan Tribunal means a member of the Diocesan Tribunal elected under clause ~~445~~ 125 or appointed under clause ~~448~~ 128 to fill a vacancy in the office of a member elected under clause ~~445~~ 125.

**exempt conduct** means conduct that is the subject of a declaration under Chapter ~~67~~.

**exercise a function** includes, if the function is a duty, performance of the duty.

**experienced lawyer** means a person –

- (a) who is or has been a judge or justice of an Australian, State or Territorial court or tribunal, or
- (b) who has been admitted as a legal practitioner for not less than 10 years.

**faith** has the same meaning as in the 1961 Constitution.

**Note:** Under section 74(1) of the 1961 Constitution, faith includes the obligation to hold the faith. Under section 74(4), reference to faith extends to doctrine.

**Faithfulness in Service** means the code for personal behaviour and the practice of pastoral ministry by clergy and church workers adopted by the Synod in October 2004 with such amendments as may be adopted from time to time by the Synod.

**function** includes power, authority and duty.

## Discipline Amendment Ordinance 2014

**grooming** has the same meaning as in *Faithfulness in Service*.

**inappropriate pastoral conduct involving a child** means engaging in a pattern of conduct involving a child or a group of children that is inconsistent with the standards and guidelines of *Faithfulness in Service*.

**licence** and **licensed** have the same meanings as in the 1961 Constitution.

**Note:** Under section 74(1) of the 1961 Constitution, *licence* means a licence under seal of the bishop of a diocese, and *licensed* has a meaning corresponding with that of *licence*.

**member of the clergy** means a person in Holy Orders.

**member of this Church** has the same meaning as in the 1961 Constitution.

**Note:** Under section 74(1) of the 1961 Constitution, *member of this Church* means a baptised person who attends the public worship of this Church and who declares that he or she is a member of this Church and of no Church which is not in communion with this Church.

**National Register** means the National Register established under the National Register Canon 2007.

**parish** has the same meaning as in the 1961 Constitution.

**Note:** Under section 74(1) of the 1961 Constitution, *parish* includes any parochial district or similar pastoral division constituted by or under ordinance of the synod of a diocese.

In the *Parishes Ordinance 1979*, “ecclesiastical district” is defined to mean a parish or provisional parish constituted under or recognised as such for the purposes of that ordinance.

Under clause 13(1) of the *Recognised Churches Ordinance 2000*, the provisions of the ~~Church Administration Ordinance 1990~~ *Parish Administration Ordinance 2008* which provide for the governance and administration of a single church parish apply in relation to a recognised church as if the meeting place or the ecclesiastical district assigned to the church is a parish and a cure of souls within the Diocese and the minister thereof licensed thereto as incumbent.

**parishioner** has the same meaning as the 1961 Constitution.

**Note:** Under section 74(1) of the 1961 Constitution, *parishioner* means a member of this Church who is entitled to vote at a meeting of a parish for the election of churchwardens, or who if no such meeting is provided for is at least 18 years of age.

**person under legal incapacity** has the same meaning as in the *Civil Procedure Act 2005*.

**Note:** Under section 3(1) of the *Civil Procedure Act 2005*, *person under legal incapacity* means any person who is under a legal incapacity in relation to the conduct of legal proceedings (other than an incapacity arising under section 4 of the *Felons (Civil Proceedings) Act 1981*) and, in particular, includes –

- (a) a child under the age of 18 years, and
- (b) an involuntary patient, a forensic patient or a correctional patient within the meaning of the *Mental Health Act 2007*, and
- (c) a person under guardianship within the meaning of the *Guardianship Act 1987*, and
- (d) a protected person within the meaning of the *NSW Trustee and Guardian Act 2009*, and
- (e) an incommunicate person, being a person who has such a physical or mental disability that he or she is unable to receive communications, or express his or her will, with respect to his or her property or affairs.

**Professional Standards Committee** or **PSC** means the Professional Standards Committee established under Part 2 of Chapter 89.

**prohibition order** means an order prohibiting a church worker from holding a specified position or office in or being employed by a church body or church authority or from

## **Discipline Amendment Ordinance 2014**

exercising any specified functions in relation to any office or position in the Diocese or in relation to employment by a church body or church authority.

**Reportable Conduct** means sexual misconduct committed against, with or in the presence of a child, including grooming of a child, or any serious physical assault of a child.

**ritual** has the same meaning as in the 1961 Constitution.

**Note:** Under section 74(1) of the 1961 Constitution, ritual includes rites according to the use of this Church, and also the obligation to abide by such use.

**Safe Ministry Board** means the board constituted under the *Safe Ministry Board Ordinance 2001*.

**serious offence** means –

- (a) a disqualifying offence listed in Schedule 2 of the *Child Protection (Working with Children) Act 2012*, or
- (b) a registrable offence within the meaning of the *Child Protection (Offenders Registration) Act 2000*.

**serious physical assault** has the same meaning as in the *Child Protection (Working with Children) Act 2012*.

**sexual abuse** has the same meaning as in *Faithfulness in Service*.

**Note:** In *Faithfulness in Service*, sexual abuse of an adult means sexual assault, sexual exploitation or sexual harassment of an adult. Sexual abuse of a child means the use of a child by another person for his or her own sexual stimulation or gratification or for that of others. It includes –

- sexual touching and fondling;
- being forced to touch or fondle another person;
- kissing or holding in a sexual manner;
- being forced to perform oral sex;
- vaginal or anal intercourse;
- vaginal or anal penetration with an object or any bodily part;
- making any gesture or action of a sexual nature in a child's presence;
- making sexual references or innuendo using any form of communication;
- voyeurism;
- exposure to any form of sexually explicit or suggestive material;
- discussion of, or inquiry about, personal matters of a sexual nature;
- being forced to masturbate self or others, or watch others masturbate; and
- indecent exposure.

Sexual abuse of a child does not include –

- sex education with the prior consent of a parent or guardian; or
- age appropriate consensual sexual behaviour between peers (ie the same or a similar age).

**sexual misconduct** has the same meaning as in the *Child Protection (Working with Children) Act 2012*.

**Special Tribunal** means the Special Tribunal constituted by and under Chapter IX of the 1961 Constitution.

**Synod** means the Synod of the Diocese.

**the 1961 Constitution** means the Schedule to the *Anglican Church of Australia Constitution Act 1961*.

**this Church** has the same meaning as in the 1961 Constitution.

## **Discipline Amendment Ordinance 2014**

**Note:** Under section 74(1) of the 1961 Constitution, this Church means the Anglican Church of Australia.

**wrongdoing** means –

- (a) a breach of faith, ritual, ceremonial or discipline, or
- (b) an offence specified by canon, ordinance or rule.

**unpaid church worker** means a lay church worker who does not hold a paid role, office or position in the Diocese at the time a complaint is made against them under this Ordinance.

### **3. Notes**

- (1) Notes in this Ordinance are for explanatory purposes only and do not form part of this Ordinance.
- (2) The Diocesan Secretary is authorised to update the notes when reprinting this Ordinance under clause 8 of the *Interpretation Ordinance 1985*.



## Discipline Amendment Ordinance 2014

### CHAPTER 2

#### WRONGDOING BY CHURCH WORKERS (OTHER THAN BREACHES OF FAITH, RITUAL OR CEREMONIAL)

##### Part 1 Complaints

#### 4. Complaints relating to offences under s. 54(2) of the 1961 Constitution

A complaint may be made against a person licensed by the Archbishop, or a person in holy orders resident in the Diocese, alleging that the person has committed or, if a charge is preferred, would at that time have committed –

- (a) an offence specified by the *Offences Ordinance 1962*, or
- (b) an offence under clause 5 of the *Relinquishment of Holy Orders Ordinance 1994*, or
- (c) an offence under section 12 of the Schedule to the *General Synod – Holy Orders, Relinquishment and Deposition Canon 2004 Adopting Ordinance 2005*, or
- (d) an offence under clause 7 of this Ordinance, or
- ~~(d)~~(e) an offence under clause 9 or 24 of this Ordinance, or
- (f) an offence under clause 36(74A) of this Ordinance, or
- ~~(e)~~(g) an offence under clause 68(3) of this Ordinance.

#### Notes:

- (1) *Offences included under the Offences Ordinance 1962 are –*
  - (a) *unchastity,*
  - (b) *drunkenness,*
  - (c) *habitual and wilful neglect of ministerial duty after written admonition in respect thereof by the Bishop of the Diocese,*
  - (d) *wilful failure to pay just debts,*
  - (e) *conduct, whenever occurring –*
    - (i) *which would be disgraceful if committed by a member of the clergy, and*
    - (ii) *which at the time the charge is preferred is productive, or if known publicly would be productive, of scandal or evil report,*
  - (f) *sexual abuse,*
  - (g) *child abuse,*
  - (h) *conviction in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or upwards or the conviction outside New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable-;*
  - (i) *grooming,*
  - (j) *inappropriate pastoral conduct involving a child, and*
  - (k) *possession, production or distribution of child exploitation material.*
- (2) *The offence under clause 5 of the Relinquishment of Holy Orders Ordinance 1994 is for a person who is regarded as having relinquished his or her holy orders under that Ordinance to hold out that the person continues to hold those orders.*
- (3) *The offences under section 12 of the Schedule to the General Synod – Holy Orders, Relinquishment and Deposition Canon 2004 Adopting Ordinance 2005 are –*
  - (a) *for a person who has relinquished the exercise of his or her holy orders under section 3 of the Canon to hold out that the person continues to exercise those orders, and*
  - (b) *for a person who has been deposed under section 4 of the Canon to hold out that the person remains in holy orders.*

## Discipline Amendment Ordinance 2014

### 5. Complaints relating to offences under s. 54(2A) of the 1961 Constitution

A complaint may be made against a member of the clergy alleging that the member of the clergy has committed an offence of unchastity, an offence involving sexual misconduct or an offence relating to a conviction for a criminal offence that is punishable by imprisonment for 12 months or upward if –

- (a) the conduct of the member of the clergy which gave rise to the complaint is alleged to have occurred in the Diocese, or
- (b) the member of the clergy was licensed by the Archbishop or was resident in the Diocese within 2 years before the complaint is made, or
- (c) the member of the clergy is in prison as a convicted person at the time the complaint is made but within 2 years before such imprisonment was licensed by the Archbishop or was ordinarily resident in the Diocese.

### 6. Complaints against lay church workers

A complaint may be made against a church worker (not being a person licensed by the Archbishop or a person in holy orders resident in the Diocese) alleging that the person has committed or, if a charge is preferred, would at that time have committed –

- (a) an offence specified by the *Offences Ordinance 1962*, or
- (b) an offence under clause 7 of this Ordinance, or
- (c) an offence under clause 9 or 24 of this Ordinance, or
- ~~(e)~~(d) an offence under clause ~~36(4A)~~36(7) of this Ordinance, or
- (e) an offence under clause 68(3) of this Ordinance.

**Note:** *Offences included under the Offences Ordinance 1962 are –*

- (a) *unchastity,*
- (b) *drunkenness,*
- (c) *habitual and wilful neglect of the duties of the person's position after written admonition in respect thereof by the appropriate church authority,*
- (d) *wilful failure to pay just debts,*
- (e) *conduct, whenever occurring –*
  - (i) *which would be disgraceful if committed by a person holding the position held by the person against whom the allegation is made or in which the person acts, and*
  - (ii) *which at the time a charge is preferred is productive, or if known publicly would be productive, of scandal or evil report,*
- (f) *sexual abuse,*
- (g) *child abuse,*
- (h) *conviction in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or upwards or the conviction outside New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable,*
- (i) *grooming,*
- (j) *inappropriate pastoral conduct involving a child, and*
- (k) *possession, production or distribution of child exploitation material.*

### 7. ~~Other complaints~~ Threats, intimidation or inducement

A ~~complaint may allege that a person (including a person who may be the subject of a complaint under this Part) has attempted~~ who attempts, by threat, intimidation or inducement –

- (a) to dissuade a person from making a complaint, or
- (b) to persuade a person to withdraw a complaint, or
- (c) to persuade a person to consent to the withdrawal of a complaint

commits an offence.

## **Discipline Amendment Ordinance 2014**

### **8. Who can make a complaint?**

- (1) A complaint may be made by any person, including the Director.
- (2) A complaint may be made by –
  - (a) a person on his or her own behalf, or
  - (b) a person on behalf of a person under legal incapacity.

### **9. Obligation to report knowledge or reasonable belief of ~~child abuse~~ certain matters**

- (1) A church worker who knows or has reason to believe that another church worker has engaged in conduct which constitutes child abuse, grooming, inappropriate pastoral conduct involving a child or possession, production or distribution of child exploitation material is to report to the Director, as soon as practicable, the name or a description of the other church worker and the grounds for believing that the other church worker has engaged in such conduct.
- (2) A person licensed by the Archbishop or a person in holy orders resident in the Diocese who, without reasonable excuse, fails to make a report under subclause (1) commits an offence.
- (3) A church worker who holds an authority issued under the Deaconesses, Readers and Other Lay Persons Ordinance 1981 for the purpose of undertaking paid work who, without reasonable excuse, fails to make a report under subclause (1) commits an offence.

### **10. Complaint by Director on knowledge or reasonable belief of inappropriate conduct**

If the Director knows or has reason to believe that a church worker has engaged in conduct that constitutes an offence specified by canon, ordinance or rule and a complaint has not been made against the person in respect of that conduct, the Director is to make a complaint against the person in respect of that conduct.

### **11. Person to whom complaint is made**

A complaint is to be made to the Director.

### **12. Form of complaint**

- (1) A complaint may be made orally or in writing, or partly orally and partly in writing.
- (2) Details of the conduct the subject of the complaint are to be provided with the complaint.
- (3) The Director, or a person nominated by the Director, may assist a person to make a complaint, to provide details of the conduct the subject of the complaint and, if the complaint is required to be verified under subclause (6), to verify the complaint.
- (4) The Director is to reproduce in writing a complaint, or that part of a complaint, that is made orally.
- (5) The Director may require a complainant to provide, within a period of not less than 14 days specified by the Director, further details of the conduct the subject of the complaint and other details that, in the opinion of the Director, may be relevant to the complaint.
- (6) The Director may require a complainant to verify the complaint by statutory declaration within a period of not less than 14 days specified by the Director.

### **13. Circumstances in which a complaint may be declined or deferred**

- (1) The Director may decline to deal with a complaint if –
  - (a) the person making the complaint has failed to provide details of the conduct the subject of the complaint or any further details required by the Director under clause 12(5), or
  - (b) the complainant has failed to verify the complaint by statutory declaration as required by the Director under clause 12(6), or
  - (c) the complaint is withdrawn under clause 16, or
  - (d) in the case of a complaint against a member of the clergy –

## Discipline Amendment Ordinance 2014

- (i) the member of the clergy is not licensed by the Archbishop and was not licensed by the Archbishop at the time the conduct the subject of the complaint is alleged to have occurred, or
- (ii) the member of the clergy is not resident in the Diocese and was not resident in the Diocese within 2 years before the complaint was made, or
- (iii) the conduct the subject of the complaint did not occur in the Diocese.

(2) The Director, with the concurrence of the PSC, may decline to deal with a complaint at any time if the PSC is of the opinion that –

- (a) the complaint is false, vexatious or misconceived or the subject-matter of the complaint is trivial, or
- (b) there is insufficient evidence to warrant an investigation under Part 2 of this Chapter, or
- (c) the complaint does not allege any conduct which may be the subject of a complaint under this Part, or
- (d) the conduct the subject of the complaint is under investigation by some other competent person or body, or
- ~~(d)~~(e) there would be no utility in dealing with the complaint under this Ordinance and the complaint does not allege reportable conduct.

(3) In determining, for the purposes of clause 13(2)(e), whether it is of the opinion that there would be no utility in dealing with the complaint under this Ordinance, the PSC is to consider the practicability and likely effectiveness of the likely recommendation if the complaint is sustained having regard to –

- (a) whether the respondent currently holds any position of leadership within the Diocese,
- (b) the length of time since the respondent has held any position of leadership within the Diocese,
- (c) the age of the respondent,
- (d) the health of the respondent, and
- (e) any other relevant circumstance.

~~(3)~~(4) The PSC is to consider, having regard to all of the circumstances, whether any, and if so which, parties should be informed about a decision to decline or defer a complaint under clause 13(2).

(5) The Director may defer consideration of a complaint if the subject matter of the complaint is under investigation by some other competent person or body or is the subject of legal proceedings.

~~(4)~~(6) The Director is to record the reasons for declining to deal with a complaint or for deferring consideration of a complaint and is to provide a copy of the record to the PSC.

~~(5)~~(7) If the Director declines to deal with a complaint or defers consideration of a complaint, the Director may do all such things as are necessary or convenient to give effect to the decision.

### 14. Subject-matter of complaint already dealt with

(1) Subject to subclause (2), No action is to be taken or continued under this Ordinance in respect of a complaint against a person if the Director, with the concurrence of the PSC, determines that the conduct the subject of the complaint is not materially different from conduct already dealt with under –

- (a) this Ordinance, or
- (b) the *Church Discipline Ordinance 1996*, or
- (c) the *Church Discipline Ordinance 2002*, or
- (d) the *Tribunal Ordinance 1962*, or
- (e) a formal investigation or inquiry with the authority of the Archbishop which was commenced prior to the date of assent to the *Church Discipline Ordinance 2002*,

## Discipline Amendment Ordinance 2014

unless, in the opinion of the Director, the complaint is supported by apparently credible evidence of fresh facts likely to lead to a different result.

(2) Notwithstanding subclause (1), action may be taken or continued under this Ordinance in respect of complaints alleging Reportable Conduct for the purpose only of the PSC making a finding under clause 33(2), an Adjudicator making a finding under clause 48 or a Tribunal making a finding under clause 73 that the person against whom the complaint is made has or has not engaged in any or all such conduct the subject of the complaint, except where the NSW Office of the Children's Guardian (or its predecessor) has previously been notified of the conduct and such notification was made in compliance with applicable legislation in force at the time the notification was made.

(3) For the purposes of subclause (2), any prior findings of fact made by the PSC, an Adjudicator or a Tribunal are conclusive.

### 15. Exempt conduct

Except in accordance with Chapter 7, No action is to be taken or continued under this Ordinance if the Director, with the concurrence of the PSC, determines that the whole of the conduct concerning which the complaint has been made is exempt conduct.

### 16. Withdrawal of complaint

(1) A complainant may, by notice in writing to the Director, withdraw the complaint at any time before the Director refers the complaint to the PSC.

(2) A complaint is also withdrawn if at any time before the Director refers the complaint to the PSC –

- (a) the complainant notifies the Director orally of the complainant's decision to withdraw the complaint, and
- (b) the Director provides the complainant with written confirmation of the withdrawal.

(3) If the Director knows the name and address of a person who is alleged to have been a subject of conduct to which the complaint relates, the complaint cannot be withdrawn without the written consent of the person or the person's representative.

**Note:** *If the complaint is withdrawn, any information about the complaint included on the National Register may be removed from the Register under section 10(1) of the National Register Canon 2007.*

### 17. Investigation or notification of making of complaint

(1) After receiving a complaint, the Director may appoint a person to investigate the complaint.

(2) After receiving the investigator's report or if, after receiving a complaint, the Director decides not to appoint a person at that particular time to investigate the complaint, the Director is –

- (a) to notify the substance of the complaint to the person against whom the complaint is made, and
- (b) to request the person to provide a response to the complaint within a period of not less than 21 days specified by the Director, and
- (c) to inform the person generally of the processes under this Ordinance, including the opportunity for conciliation (which may be done by providing the person with a copy of this Ordinance), and
- (d) to advise the person of the possible sanctions that might follow if the allegations in the complaint are proven, and the opportunities for their mitigation or suspension, and
- (e) to caution the person not to make any admissions without the benefit of legal advice.

**Note:** *Upon notifying the substance of the complaint to the person against whom the complaint is made, the complaint may become a notifiable complaint for the purposes of the National Register Canon 2007. In this case, section 8 of the Canon requires the Director to*

## **Discipline Amendment Ordinance 2014**

*notify the General Secretary of certain information about the complaint for inclusion on the National Register within 1 month of having access to that information.*

### **18. Response to complaint**

- (1) A person against whom a complaint is made and who has been provided with a copy of the complaint may respond to the complaint by admitting or denying it in whole or in part.
- (2) A response must be in writing signed by the person against whom the complaint is made or, in the case of a person under legal incapacity, by –
  - (a) a parent or guardian, or
  - (b) a person responsible for the welfare of the person under legal incapacity or acting on his or her behalf.

## **Part 2 Investigation and assessment of complaints**

### **19. Admission of complaint or substance of complaint – referral of complaint to PSC or the Adjudicator**

If the person against whom the complaint is made admits the complaint or the substance of the complaint, the Director is to refer the complaint to the PSC or, in the case of an unpaid church worker, to the Adjudicator.

### **20. Non-admission of complaint – appointment of investigator**

If the person against whom the complaint is made denies the complaint, or does not admit the complaint or the substance of the complaint within the period specified by the Director, the Director is to appoint a person to investigate the complaint, unless the complaint has been investigated under clause 17.

### **21. Investigation of complaint**

A person appointed to investigate a complaint under clause 17 or clause 20 is to investigate the complaint promptly.

### **22. General functions of investigator**

- (1) For the purposes of an investigation, the investigator is, subject to this clause, to obtain such statutory declarations, written statements, recorded conversations, reports, documents and other material as the investigator considers necessary or advisable.
- (2) The investigator may require the person making the complaint to verify the complaint by statutory declaration if this has not already been done.
- (3) If the investigator interviews a person, the investigator must allow the person to have another person present with them, being a person who is not a witness to the matters which are the subject of the complaint.
- (4) The investigator is –
  - (a) to make a written record or, with the consent of the person, an audio record, of all interviews with the person, and
  - (b) to provide the person with a copy of the record, and
  - (c) to have the person verify the record by signing a copy of it or, in the case of an audio record, by signing a statement to the effect that the audio record is a true record of the interview.

### **23. Responsibility of person against whom complaint is made to co-operate in the investigation**

- (1) The investigator may, by notice in writing to the person against whom the complaint is made, require the person –
  - (a) to respond to a question or series of questions within the time specified in the notice in relation to any matter relevant to the investigation, and
  - (b) to otherwise assist in, or cooperate with the investigation of the complaint in a specified manner.
- (2) It is the obligation of a person against whom a complaint is made –
  - (a) to answer truthfully any question put by or on behalf of the investigator in the exercise of powers conferred by this Ordinance, and

## **Discipline Amendment Ordinance 2014**

- (b) not to mislead or obstruct the investigator, and
- (c) not unreasonably to delay the investigator in the exercise of functions conferred by this Ordinance.

### **24. Offences in relation to an investigation**

(1) A person licensed by the Archbishop or a person in holy orders resident in the Diocese who, without reasonable excuse, fails to comply with a notice issued under clause 23(1) commits an offence.

(2) A church worker who holds an authority issued under the *Deaconesses, Readers and Other Lay Persons Ordinance 1981* for the purpose of undertaking paid work who, without reasonable excuse, fails to comply with a notice issued under clause 23(1) commits an offence.

(3) A person referred to in subclause (1) or (2) must not mislead or obstruct the investigator in the exercise of powers conferred by this Ordinance. The wilful contravention of this subsection is an offence.

### **25. Report of investigation**

The investigator is to make and forward to the Director, without unnecessary delay, a report setting out the results of the investigation together with a copy of all records made as referred to in clauses 22 and 23 and any other relevant material obtained in the course of the investigation.

### **26. Revocation of appointment of investigator**

The Director may, by notice in writing, revoke the appointment of an investigator if the investigator fails or refuses to comply with clause 21, 22 or any reasonable requirement of the Director.

## **Part 3 Suspension and prohibition orders**

### **27. Recommendation for suspension or prohibition order**

At any time after a complaint is made against a person, the Director may, after giving the person an opportunity to be heard, recommend to the relevant Church authority either or both of the following –

- (a) that the person should be suspended from exercising the functions of office or employment by one or more Church bodies,
- (b) that a prohibition order be made against the person.

### **28. Matters to be considered before making a recommendation**

Before making a recommendation under clause 27, the Director is to take the following matters into account –

- (a) the seriousness of the conduct alleged in the complaint,
- (b) the nature of the material to support or negate the complaint,
- (c) whether any person is at risk of harm,
- (d) after consultation with the relevant Church body or its representative, the effect on the person against whom the complaint is made, a relevant Church body and on the Church of acting and of not acting under clause 27,
- (e) any other allegation of conduct similar to that alleged in the complaint previously made to the Director or to an equivalent person or body within the previous 10 years,

and may take into account any other relevant matter.

### **29. Giving effect to a recommendation**

The relevant Church authority is authorised to do all such things as may be necessary to give effect to a recommendation made under clause 27.

### **30. Termination of suspension or prohibition order**

(1) A suspension or prohibition order made by a Church authority pursuant to a recommendation under clause 27 must be terminated by the Church authority –

## Discipline Amendment Ordinance 2014

- (a) if the Director terminates the investigation without referring the matter to the PSC, or
- (b) upon any direction to that effect given by the PSC, or
- ~~(c) upon the PSC making a recommendation to the Church authority under clause 37A, or~~
- ~~(d)~~(c) upon the Church authority giving effect to a recommendation of the Adjudicator under clause 47, the Diocesan Tribunal under section 60 (1) of the 1961 Constitution or the Disciplinary Tribunal under clause 6674.

(2) A suspension by the Archbishop pursuant to a recommendation under clause 27 must also be terminated by the Archbishop if the Archbishop suspends the person against whom the complaint is made under section 61 of the 1961 Constitution.

### 31. Effect of suspension or prohibition order

During a suspension or prohibition order pursuant to the provisions of this Part or during a period when a person voluntarily stands down from a position while conduct the subject of a complaint is dealt with under this Ordinance –

- (a) the person against whom the complaint is made must comply with the terms of any prohibition order, and
- (b) the person against whom the complaint is made is ineligible for appointment to any position or function covered by any suspension or prohibition order, and
- (c) the relevant Church authority may fill the vacancy caused by any suspension or prohibition order, or while the person against whom the complaint is made is standing down, and
- (d) the person against whom the complaint is made is entitled to whatever stipend, salary, allowances and other benefits that he or she would otherwise have received and which are to be met or reimbursed from funds under the control of the Synod.

## Part 4 Reference of complaints to the PSC

### 32. Action on receipt of investigator's report

(1) On receipt of the investigator's report in relation to a complaint made against a person who is not an unpaid church worker, the Director must –

- (a) notify the PSC of the identity of the person against whom the complaint is made, and
- (b) furnish the PSC with a copy of all material in the Director's possession relevant to the complaint, including a copy of the investigator's report, and
- (c) request the PSC to provide a written report to the Director within 42 days or such longer period as may be agreed to by the Director at any time.

**Note:** For complaints made against unpaid church workers see Chapter 4.

(2) The Director must –

- (a) notify the person against whom the complaint is made that the complaint has been referred to the PSC, and
- (b) furnish the person with a copy of all material in the Director's possession relevant to the complaint, including a copy of the investigator's report, and
- (c) invite the person to provide any further information or material, and to make written representations to the PSC, relating to the complaint, within 28 days or such longer period as may be agreed to by the Director at any time.

### 33. Review of material by the PSC

(1) The PSC is to review the material furnished to it by the Director and any further information or material provided to it by the person against whom the complaint is made.

(2) If the complaint alleges ~~sexual misconduct committed against, with or in the presence of a child, including grooming of a child, or any serious physical assault of a child~~ Reportable Conduct, and the PSC considers that it is unable to make a finding on the material before it



## Discipline Amendment Ordinance 2014

that the person has or has not engaged in any or all of such conduct the subject of the complaint, the PSC must recommend –

- (a) if the person is subject to the jurisdiction of the Diocesan Tribunal, that the Archbishop appoint a person to promote a charge against the person before the Diocesan Tribunal, or that the complaint be referred to a body in another diocese with equivalent jurisdiction, or
- (b) if the person is subject to the jurisdiction of the Disciplinary Tribunal, that the Archbishop appoint a person to promote a charge against the person before the Disciplinary Tribunal, or that the complaint be referred to a body in another diocese with equivalent jurisdiction.

### 34. Recommendations of the PSC

(1) After conducting its review, the PSC may make one or more of the following recommendations in relation to the person against whom the complaint is made –

- (a) that the person agree to participate in conciliation, if arrangements for the conciliation of the complaint have not previously been made ,

**Note:** *Chapter 3 makes provision for the conciliation of complaints.*

- (b) that the person make an apology of a kind specified by the PSC,
- (c) that the person make reparation as specified by the PSC for the conduct the subject of the complaint,
- (d) that the person undertake training, or retraining, of a nature specified by the PSC,
- (e) that the person receive counselling of a nature specified by the PSC,
- (f) that the person undertake to the Director, in such terms as are specified by the PSC, any one or more of the following –
  - (i) that he or she will resign from any specified position or office in the Diocese or any specified employment by a church body or church authority,
  - (ii) that he or she will not accept nomination for or appointment to any specified position or office in the Diocese or any specified employment by a church body or church authority,
  - (iii) that he or she will not exercise any specified function or will meet any specified condition or restriction, in relation to any office or position in the Diocese, or in relation to employment by any church body or church authority,
- (g) that the person resign from his or her office or employment, request voluntary relinquishment from holy orders or request voluntary deposition from holy orders, with such admissions and other conditions as the PSC considers appropriate in all the circumstances,
- (h) if–

- ~~(i) the person is subject to the jurisdiction of the Diocesan Tribunal, and~~
- ~~(ii) the PSC is of the opinion that there is a reasonable likelihood that the complaint, if sustained, will result in the Diocesan Tribunal making a recommendation for the person's deposition from orders, prohibition from functioning or removal from office, and~~
- ~~(iii) the PSC is of the opinion that there is a reasonable likelihood that the complaint will be sustained before the Diocesan Tribunal,~~

that the Archbishop appoint a person to promote a charge against the person before the Diocesan Tribunal, or that the complaint be referred to a body in another diocese with equivalent jurisdiction,

**Note:** *As to the persons who are subject to the jurisdiction of the Diocesan Tribunal, see the note to Division 1 of Part 2 of Chapter 45.*

- (i) if–
  - ~~(i) the person is subject to the jurisdiction of the Disciplinary Tribunal,~~

## Discipline Amendment Ordinance 2014

~~(ii) the PSC is of the opinion that there is a reasonable likelihood that the complaint, if sustained, will result in the Disciplinary Tribunal making a recommendation for a prohibition order against the person or the removal of the person from a specified position or office, and~~

~~(iii) the PSC is of the opinion that there is a reasonable likelihood that the complaint will be sustained before the Disciplinary Tribunal,~~

that the Archbishop appoint a person to promote a charge against the person before the Disciplinary Tribunal, or that the complaint be referred to a body in another diocese with equivalent jurisdiction,

**Note:** *The persons who are subject to the jurisdiction of the Disciplinary Tribunal are church workers who are not subject to the jurisdiction of the Diocesan Tribunal – see clause 4452.*

~~(j) that the person consent to the relevant Church authority issuing a prohibition order,~~

~~(j)(k) that no further action be taken with respect to the complaint.~~

(1A) The PSC may only make the recommendations in subclauses 34(1)(h) or (i) if –

~~(a) the person is subject to the jurisdiction of the relevant Tribunal,~~

~~(b) in the case of a person subject to the jurisdiction of the Diocesan Tribunal – the PSC is of the opinion that there is a reasonable likelihood that the complaint, if sustained, will result in the relevant Tribunal making a recommendation for the person's deposition from orders, prohibition from functioning or removal from office,~~

~~(c) in the case of a person subject to the jurisdiction of the Disciplinary Tribunal – the PSC is of the opinion that there is a reasonable likelihood that the complaint, if sustained, will result in the Disciplinary Tribunal making a recommendation for a prohibition order against the person or the removal of the person from a specified position or office, and~~

~~(d) the PSC is of the opinion that there is a reasonable likelihood that the complaint will be sustained before the relevant Tribunal.~~

(2) In making a recommendation, the PSC is to take the following matters into consideration –

(a) the nature of the complaint and the seriousness of the conduct the subject of the complaint, in particular, whether that conduct comprises a serious offence, ~~or child abuse, grooming, inappropriate pastoral conduct involving a child or possession, production or distribution of child exploitation material,~~

(b) whether there is more than one complaint,

(c) whether the complaint alleges more than one incident, or only a single incident,

(d) when the conduct is alleged to have occurred,

(e) the circumstances in which the conduct is alleged to have occurred,

(f) the ages of the complainant and the person against whom the complaint is made at the time the conduct is alleged to have occurred,

(g) if the person against whom the complaint is made –

(i) is a member of the clergy – whether the person was a member of the clergy at the time the conduct is alleged to have occurred, or

(ii) is not a member of the clergy – the position held or function performed by the person at the time the conduct is alleged to have occurred,

(h) whether the evidence of the complainant is corroborated,

(i) any views expressed by the complainant as to the desired outcome of the complaint,

(j) whether the person against whom the complaint is made has made any reparation for the conduct the subject of the complaint and, if so, the nature and extent of the reparation,

## **Discipline Amendment Ordinance 2014**

- (k) any other offences committed by the person against whom the complaint has been made,
  - (l) whether any part of the conduct the subject of the complaint is exempt conduct,
  - (m) the practicability and likely effectiveness of the recommendation,
  - (n) such other matters as the PSC considers relevant.
- (3) The PSC may direct that a suspension or prohibition order made by a Church authority pursuant to a recommendation under clause 27 must be terminated by the Church authority.
- (4) If the PSC considers –
- (a) that the material furnished to it by the Director does not disclose any conduct which may be the subject of a complaint under Part 1 of this Chapter, or
  - (b) that the complaint is false, vexatious or misconceived, or
  - (c) that it is more likely than not that the subject-matter of the complaint did not occur, or
  - (d) that the subject-matter of the complaint is trivial,

the PSC is to recommend that no further action be taken with respect to the complaint.

*Note: If the PSC considers that the complaint is false, vexatious or misconceived or that it is more likely than not that the subject-matter of the complaint did not occur, any information about the complaint which has been included on the National Register may be removed from the Register under section 10(1) of the National Register Canon 2007 on the basis that it relates to a notifiable complaint which has been exhausted.*

### **35. Notice of recommendation**

(1) The PSC is to give notice in writing of its recommendation to the complainant, the person against whom the complaint is made, the Director, the Archbishop and a relevant church authority as soon as practicable after the recommendation is made. Where the PSC makes a recommendation under clause 34(1)(f), (g) or (j), the PSC must include a statement of the reasons for the recommendation.

(1A) In respect of a recommendation made by the PSC under clause 34(1)(h) or (i), the notice must include a statement that proceedings will be taken against the person in accordance with clause 37.

(2) In respect of any other recommendation made by the PSC (except a recommendation that no further action be taken with respect to the complaint), the notice must include a statement that if the person against whom the complaint is made –

- (a) does not accept the PSC's recommendation within 14 days after the date of the notice and comply with the recommendation to the satisfaction of the Director, proceedings will be taken against the person in accordance with clause 36, and
  - (b) considers there are good reasons why the recommendation cannot be accepted within 14 days, the person may request that the Director determine a longer period in which the recommendation may be accepted under clause 36(2A).
- (3) If any information about the complaint has been included on the National Register, the notice must indicate whether acceptance of and compliance with the PSC's recommendation will result in the information being removed from or retained on the National Register.

### **36. Response to the recommendation**

- (1) If the person against whom the complaint is made, by notice in writing to the Director –
- (a) accepts the recommendation of the PSC within 14 days after the date of the notice of the recommendation, and
  - (b) complies with any recommendation under clauses 34(1)(a) to (g) to the satisfaction of the Director, and continues to do so within or throughout any period that the notice issued under clause 35(1) states that the action required by the recommendation is to be undertaken,

no further action is to be taken against the person under this Ordinance in relation to the complaint, except as provided by this clause.

## Discipline Amendment Ordinance 2014

~~(1A)~~(2) The Director may, in writing, determine a period longer than 14 days within which a recommendation under subclause (1) may be accepted if the Director considers there are good reasons why the recommendation cannot be accepted within 14 days. If the Director determines a longer period, he or she must, as soon as reasonably practicable after making the determination, inform the PSC of the determination together with the reasons for the determination.

~~(1B)~~(3) If the complaint alleges ~~sexual misconduct committed against, with or in the presence of a child, including grooming of a child, or any serious physical assault of a child~~ Reportable Conduct and –

- (a) the person against whom the complaint is made –
  - (i) admits the complaint or the substance of the complaint, or
  - (ii) accepts the recommendation or recommendations of the PSC made under clause 34(1)(a) to (g) and (j), or
- (b) the PSC recommends that no further action be taken with respect to the complaint under clause 34(4)(d),

and the PSC is satisfied that the person has engaged in any or all of the conduct the subject of the complaint, then the PSC must make a finding that the person engaged in that conduct.

~~(2)~~(4) If the only recommendation is for the conciliation of the complaint and conciliation is attempted but the parties to the conciliation and the person conducting the conciliation are not satisfied that the subject of the complaint has been properly dealt with by the conciliation, the Director is to refer the complaint to the PSC for a further recommendation under clause 34.

~~(3)~~(5) If the person against whom the complaint is made fails to comply with the recommendation to the satisfaction of the Director, including within or throughout any period that the notice issued under clause 35(1) states that the action required by the recommendation is to be undertaken –

- (a) in the case of a person subject to the jurisdiction of the Diocesan Tribunal – the Archbishop is to appoint a person to promote a charge against the person before the Diocesan Tribunal or refer the complaint to a body in another diocese with equivalent jurisdiction, or
- (b) in the case of a person who is subject to the jurisdiction of the Disciplinary Tribunal but is not an unpaid church worker because of an office, role, appointment or position for which they are paid – the Archbishop is to appoint a person to promote a charge before the Disciplinary Tribunal or refer the complaint to a body in another diocese with equivalent jurisdiction, ~~or~~
- ~~(c) in the case of a person who is subject to the jurisdiction of the Disciplinary Tribunal because of an office, role, appointment or position for which they are not paid – the Archbishop may –~~
  - ~~(i) appoint a person to promote a charge before the Disciplinary Tribunal, or~~
  - ~~(ii) refer the complaint to the PSC for a recommendation under clause 37A, or~~
  - ~~(iii) refer the complaint to a body in another diocese with equivalent jurisdiction.~~

(4)(6) If the person against whom the complaint is made does not accept the recommendation of the PSC by notice in writing to the Director within 14 days after the date of the notice of the recommendation or such longer period as the Director may determine under subclause ~~(1A)~~(2) –

- (a) in the case of a person subject to the jurisdiction of the Diocesan Tribunal - the Archbishop is to appoint a person to promote a charge against the person before the Diocesan Tribunal or refer the complaint to a body in another diocese with equivalent jurisdiction, or

## Discipline Amendment Ordinance 2014

- (b) in the case of a person subject to the jurisdiction of the Disciplinary Tribunal ~~because of an office, role, appointment or position for which they are paid but is not an unpaid church worker~~ – the Archbishop is to appoint a person to promote a charge before the Disciplinary Tribunal or refer the complaint to a body in another diocese with equivalent jurisdiction, ~~or~~
- (c) ~~in the case of a person subject to the jurisdiction of the Disciplinary Tribunal because of an office, role, appointment or position for which they are not paid – the Archbishop may –~~
- (i) ~~appoint a person to promote a charge before the Disciplinary Tribunal, or~~
  - (ii) ~~refer the complaint to the PSC for a recommendation under clause 37A, or~~
  - (iii) ~~refer the complaint to a body in another diocese with equivalent jurisdiction.~~

~~(4A)(7)~~ A person who gives an undertaking to the Director in or substantially in the terms of a recommendation made under clause 34(1)(f) and fails to honour that undertaking commits an offence.

~~(8)~~ If the PSC makes a recommendation under clause 34(1)(j) that the person consent to the relevant Church authority issuing a prohibition order and the person accepts this recommendation, the relevant Church authority is empowered to issue the prohibition order.

~~(5)(9)~~ For the avoidance of doubt, this clause 36 does not apply to a recommendation made by the PSC that no further action be taken with respect to the complaint.

**Note:** Section 35(1) of the Child Protection (Working With Children) Act 2012 imposes a duty on a reporting-body (which includes the Anglican Church in New South Wales, including organisations of dioceses) to notify the Children’s Guardian of the name and other identifying particulars of any child-related worker against whom the reporting body has made a finding that the worker has engaged in sexual misconduct committed against, with or in the presence of a child, including grooming of a child, or any serious physical assault of a child.

### 37. Recommendation that a complaint be dealt with by a Tribunal

If the recommendation of the PSC is that the Archbishop appoint a person to promote a charge before the Diocesan Tribunal or the Disciplinary Tribunal, the Archbishop must comply with the recommendation.

### ~~37A. Further recommendation of PSC in relation to unpaid church workers~~

~~(1) If the Archbishop refers a complaint to the PSC under clause 36(3)(c)(ii) or 36(4)(c)(ii), the PSC may, after giving the person against whom the complaint is made an opportunity to be heard, make any one or more of the following recommendations to the relevant church authority –~~

- ~~(a) that no further action be taken in relation to the complaint,~~
- ~~(b) that a prohibition order be made against the person in such terms as are specified in the recommendation,~~
- ~~(c) that the person be removed from a specified position or office,~~
- ~~(d) such other recommendations as the PSC thinks fit.~~

~~(2) The PSC is to give notice in writing of its recommendation to the complainant, the person against whom the complaint is made, the Director and the Archbishop as soon as practicable after the recommendation is made.~~

~~(3) The relevant church authority is authorised to do all such things as may be necessary to give effect to a recommendation made under subclause (1).~~

## Part 5 Costs of responding to a complaint

### ~~37B~~37A. Reimbursement of costs

(1) A person who is not an unpaid church worker who provides a response to a complaint under clause 18, responds to a request by an investigator under clause 23 or provides any further information or material, or makes written representations to the PSC under clause 32

## **Discipline Amendment Ordinance 2014**

may be reimbursed their reasonable costs of obtaining advice and assistance from a legal practitioner.

(2) The person's costs are to be paid by the Synod in accordance with the scale of costs approved for the time being by the Standing Committee on the recommendation of the Director.

## Discipline Amendment Ordinance 2014

### CHAPTER 3

#### CONCILIATION OF COMPLAINTS

##### 38. Arrangements for conciliation

- (1) The Director may, with the consent of the complainant and the consent of the person against whom the complaint is made, make arrangements for the conciliation of the complaint.
- (2) Arrangements for the conciliation of a complaint may be made –
  - (a) at any time before the PSC makes a recommendation under clause 34 or, in the case of a complaint referred to an Adjudicator, at any time before the Adjudicator makes a recommendation under clause 47, or
  - (b) if the PSC makes a recommendation that the complaint be the subject of conciliation, at any time after the recommendation is made and before a charge arising from the complaint is promoted before the Diocesan Tribunal or the Disciplinary Tribunal.
- (3) Conciliation cannot be arranged if –
  - (a) the complaint alleges child abuse, grooming, inappropriate pastoral conduct involving a child or possession, production or distribution of child exploitation material and the person alleged to have been abused, groomed or inappropriately treated is still a child, or
  - (b) the complaint alleges sexual abuse which comprises a serious offence, or
  - (c) the conduct the subject of the complaint, if proven, is likely, in the Director's opinion, to result in the imposition of a penalty on the person against whom the complaint is made which comprises or includes either or both of the following –
    - (i) in the case of a person who is a licensed by the Archbishop – the suspension or revocation of the person's licence,
    - (ii) in any case – the issue of a prohibition order against the person.

##### 39. Conduct of conciliation

- (1) The conciliation of a complaint is to be conducted by a person appointed by the Director in such manner as the person thinks fit.
- (2) Any other process under this Ordinance which is current at the time when conciliation is commenced or which may be implemented at any subsequent time may be suspended or deferred in accordance with such directions as may be given from time to time by the Director.
- (3) Any such direction has effect according to its terms.

##### 40. Termination of conciliation

- (1) The person conducting the conciliation of a complaint may terminate the conciliation at any time.
- (2) The person conducting the conciliation of a complaint must terminate the conciliation if requested to do so by any party to the conciliation.
- (3) The conciliation of a complaint is terminated, unless it is completed or terminated at an earlier time, on the expiration of 2 months after the conciliation commenced to be conducted.

##### 41. Outcome of conciliation

- (1) If the parties to a conciliation and the person conducting the conciliation are satisfied that the matter the subject of the complaint has been properly dealt with by the conciliation, no further action is to be taken under this Ordinance with respect to the matter.
- (2) The outcome of a conciliation to which subclause (1) applies is to be recorded in writing and signed by the parties to the conciliation.
- (3) If the parties to a conciliation and the person conducting the conciliation are not satisfied that the matter the subject of the complaint has been properly dealt with by the conciliation, any process which was suspended or deferred under clause 39(2) may be resumed or implemented.

## **Discipline Amendment Ordinance 2014**

### **42. Confidentiality of conciliation**

(1) A person involved in a conciliation is to treat as confidential all communications, whether written or oral, that take place during the course of the conciliation and those communications cannot be used in –

- (a) an investigation under this Ordinance, or
- (b) proceedings before the Diocesan Tribunal or the Disciplinary Tribunal, or
- (c) a licensing review under the *Parish Relationships Ordinance 2001*, or
- (d) action taken under the *Parish Disputes Ordinance 1999*.

(2) This clause does not apply to the agreed outcome of the conciliation.

(3) The agreed outcome of the conciliation is to be recorded by the Director and a copy is to be given to each party to the conciliation and the Archbishop.

(4) The agreed outcome may be notified by the Director to the Standing Committee of Synod (and by the Standing Committee to the Synod), but the notification must not disclose the names of a party to the conciliation, or any other information that would enable a party to be identified, unless the party has consented to his or her name being disclosed.



## **Discipline Amendment Ordinance 2014**

### **CHAPTER 4**

#### **THE ADJUDICATOR**

##### **43. Application**

(1) Subject to subclause (2), this Chapter applies to complaints made against unpaid church workers to the exclusion of Part 4 of Chapter 2 and Chapter 5.

(2) If the Director considers that a complaint against an unpaid church worker raises substantially the same circumstances as another complaint that has been or will be referred to the PSC, the Director may instead refer the complaint to the PSC for consideration under Part 4 of Chapter 2.

##### **44. Appointment of the Adjudicator**

The Registrar is to promptly appoint an experienced lawyer to be the Adjudicator for a complaint to which this Chapter applies.

##### **45. Action on receipt of an admission or the investigator's report**

(1) On receipt of an admission under clause 19 or the investigator's report, the Director must –

- (a) notify the Adjudicator of the identity of the respondent, and
- (b) furnish the Adjudicator with a copy of all material in the Director's possession relevant to the complaint, including a copy of any investigator's report.

(2) The Director must –

- (a) notify the respondent that the complaint has been referred to the Adjudicator, and
- (b) furnish the respondent with a copy of all material in the Director's possession relevant to the complaint, including a copy of any investigator's report, and
- (c) invite the respondent to provide any further information or material, and to make written representations to the Adjudicator, relating to the complaint, within 28 days or such longer period as may be agreed to by the Director at any time.

##### **46. Review of material by the Adjudicator**

(1) The Adjudicator is to review the material provided by the Director and any further information or material provided by the respondent.

(2) If the complaint or the substance of the complaint has been admitted by the respondent, the Adjudicator may proceed to make recommendations under clause 47.

(3) If the complaint or the substance of the complaint has not been admitted by the respondent, the Adjudicator must apply the rules of procedural fairness and otherwise determine a procedure for resolution of the complaint before proceeding to make recommendations under clause 47.

##### **47. Recommendations**

(1) The Adjudicator is to make one or more recommendations in relation to the respondent and for this purpose may make a recommendation or recommendations to one or both of the following –

- (a) the respondent, and
- (b) the Archbishop or the relevant church authority.

(2) For the purposes of clause 47(1)(a) the Adjudicator has the same power to make recommendations as the PSC under clause 34(1) (with the exception of clauses 34(1)(h) and (i)).

(3) For the purposes of clause 47(1)(b) the Adjudicator has the same power to make recommendations as the Disciplinary Tribunal under clause 74.

(4) For the avoidance of doubt, if the Adjudicator makes a recommendation under clause 47(1)(a), the Adjudicator is not precluded from making further recommendations in relation to the respondent under clause 47(1)(b).

## **Discipline Amendment Ordinance 2014**

### **48. Findings with respect to Reportable Conduct**

If the complaint alleges Reportable Conduct, the Adjudicator must make a finding on whether the person has or has not engaged in any or all of such conduct the subject of the complaint.

### **49. Costs of responding to a complaint**

The Adjudicator has no power to award costs. The respondent is responsible for meeting their own costs of responding to the complaint.

### **50. Review**

- (1) Subject to subclause (2), decisions and recommendations of the Adjudicator are not appellable or subject to review.
- (2) A respondent may make an application for review under clause 81 and for this purpose –
  - (a) the respondent is deemed to meet the qualifying requirements in clause 81(1),  
and
  - (b) references to the Disciplinary Tribunal in clause 81 are taken to be references to the Adjudicator.

## Discipline Amendment Ordinance 2014

### CHAPTER 45

#### THE TRIBUNALS

##### Part 1 Introductory

**Note:** This Chapter, in so far as it applies to the Diocesan Tribunal, is made under and for the purposes of the Anglican Church of Australia Constitution Act 1961 and, in particular, Chapter IX (The Tribunals) of the Schedule to that Act. In order to understand more easily the disciplinary scheme that is found partly in that Act and partly in this Ordinance, summaries of the relevant provisions of that Act are included as notes at appropriate places in this Ordinance. As the notes do not necessarily reproduce the exact text of that Act, reference should, where necessary, be made directly to that Act.

##### **43-51. Definition**

In this Chapter, **the Tribunal** means –

- (a) in the case of a person who is subject to the jurisdiction of the Diocesan Tribunal – the Diocesan Tribunal, and
- (b) in the case of a person who is subject to the jurisdiction of the Disciplinary Tribunal – the Disciplinary Tribunal.

##### **Division 1 Jurisdiction of the Tribunals**

##### **What is the nature of the Diocesan Tribunal?**

**Note:** Section 54(1) of the 1961 Constitution provides that the Diocesan Tribunal is the court of the Archbishop.

##### **What is the jurisdiction of the Diocesan Tribunal?**

**Note:** Section 54(2) of the 1961 Constitution provides that the Diocesan Tribunal has jurisdiction to hear and determine charges of breaches of faith, ritual, ceremonial or discipline and of such offences as may be specified by canon, ordinance or rule in respect of –

- a person licensed by the Archbishop, or
- any other person in holy orders resident in the diocese.

Section 54(2A) of the 1961 Constitution provides that the Diocesan Tribunal also has jurisdiction to hear a charge relating to an offence of unchastity, an offence involving sexual misconduct or an offence relating to a conviction for a criminal offence that is punishable by imprisonment for 12 months or more in respect of a member of the clergy if –

- the act of the member of the clergy which gave rise to the charge occurred in the Diocese, or
- the member of the clergy was licensed by the Archbishop or was resident in the Diocese within 2 years before the charge was laid, or
- the member of the clergy is in prison as a convicted person at the time the charge was laid, but within 2 years before imprisonment was licensed by the Archbishop or was ordinarily resident in the Diocese.

##### **44-52. What is the jurisdiction of the Disciplinary Tribunal?**

The Disciplinary Tribunal has jurisdiction to hear and determine charges brought against church workers who are not subject to the jurisdiction of the Diocesan Tribunal.

##### **Division 2 Charges**

**Note:** By clause 7987 of this Ordinance, Divisions 2 and 3 of Part 1 of this Chapter apply to a charge in respect of a breach of faith, ritual or ceremonial in the same way as those Divisions apply to a charge for other wrongdoing except as provided by Chapter 56.

##### **45-53. Archbishop's appointee**

- (1) The appointment by the Archbishop of a person to make a charge is to be in writing signed by the Archbishop.
- (2) The appointment continues until it is revoked in writing by the Archbishop, unless the appointment is expressed to be for the purpose of making a particular charge or charges or for a specified period of time.

## **Discipline Amendment Ordinance 2014**

### **46-54. What is the form of a charge?**

- (1) A charge must state –
  - (a) the wrongdoing that it is alleged the person has committed, and
  - (b) particulars of the acts or omissions alleged to constitute the wrongdoing.
- (2) A charge may allege more than one wrongdoing.
- (3) The allegations in the charge must be verified by statutory declaration made by the person or persons making the charge or by any other person or persons.
- (4) A charge must be signed by the person or persons making the charge.
- (5) A charge must include an address within the Diocese for service of documents on the person or persons making the charge.
- (6) A charge may be, but does not have to be, in the form of Schedule 1, Schedule 2 or Schedule 3, to this Ordinance.

### **47-55. How is a charge made?**

A charge is made by lodging a copy of the charge at the Registrar's office together with the statutory declaration or declarations verifying the allegations in the charge.

### **48-56. Is there a time limit to the making of a charge?**

- (1) Subject to clause ~~8088~~, there is no time limit to the making of a charge.
- (2) However, the Tribunal, under clause ~~6469~~, may dismiss a charge for delay in making the charge.

### **49-57. Can a charge be withdrawn?**

- (1) The person who has or the persons who have made a charge may, with the consent of the person charged, withdraw the charge at any time before it has been referred to the Tribunal by the Registrar.
- (2) The person who has or the persons who have made a charge may, with the consent of the person charged and of the Tribunal, withdraw the charge at any time after it has been referred to the Tribunal by the Registrar.
- (3) In granting its consent, the Tribunal may direct that a specified person or persons be substituted for the person or persons who made the charge.
- (4) A charge is withdrawn by lodging a copy of the notice of withdrawal at the office of the Registrar.
- (5) The notice of withdrawal is to be signed by the person or persons making the charge and the person charged.
- (6) If a charge is withdrawn, no further proceedings may be taken under this Ordinance in relation to the charge by the person or persons who made the charge.
- (7) However, the withdrawal of a charge does not prevent another person or other persons from making the same or a different charge against the person named in the charge that is withdrawn.

### **50-58. Notice of the charge**

As soon as practicable after a charge is made against a person, the Registrar must serve a copy of the charge on the person.

#### **Circumstances in which the Archbishop may suspend a person from office**

##### **Notes:**

- (1) *Suspension before promotion of charge –*

*Section 61(2) of the 1961 Constitution provides that the Archbishop may suspend a person licensed by the Archbishop, or a person in holy orders resident in the Diocese, from the duties of office where –*

- (a) *a charge is proposed to be promoted under this Ordinance, and*
- (b) *the charge will not allege a breach of faith, ritual or ceremonial, and*

## **Discipline Amendment Ordinance 2014**

- (c) *the charge relates to an offence that is punishable by imprisonment for 12 months or more of which the person has been charged or convicted or in respect of which the Archbishop has received a report from an experienced lawyer stating that there is a prima facie case of the person having committed the offence.*

*Section 61(3) – (6) of the 1961 Constitution provide that the period of suspension must not exceed 28 days from the date of service of the Archbishop’s notice of suspension on the person unless the charge is promoted within the period of suspension, in which case the period of suspension continues until the first meeting of the Standing Committee thereafter. The Archbishop may revoke a suspension at any time during its currency. Suspension from the duties of office does not deprive a person from the emoluments appertaining to the office.*

- (2) *Suspension following promotion of charge –*

*Section 61(1) of the 1961 Constitution provides that where a charge has been promoted before the Diocesan Tribunal against a person licensed by the Archbishop, the Archbishop, with the concurrence of the Standing Committee, may suspend the person from the duties of his or her office until determination of the charge, or a lesser time. The Archbishop may make such arrangements for the performance of the duties of the office as may be authorised by any canon, ordinance or rule or, in the absence of such canon, ordinance or rule, as the Archbishop deems proper.*

### **51-59. Request for answer to the charge**

- (1) The Registrar must serve, with the copy of the charge –
- (a) a request that the person charged lodge an answer to the charge at the Registrar’s office within a period of not less than 21 days specified in the Registrar’s request, and
  - (b) general information concerning the processes under this Ordinance, the possible sanctions that might follow if the charge is proven, and the opportunities for their mitigation or suspension (all of which may be done by providing the person charged with a copy of this Ordinance), and
  - (c) a caution not to make any admissions without the benefit of legal advice.
- (2) The Registrar may from time to time by notice in writing to the person charged extend the period specified for lodging the person’s answer even though the period originally specified or any previous extension has elapsed.

### **52-60. Answer to the charge**

- (1) An answer to a charge must be signed by the person charged.
- (2) In an answer, the person charged may do either or both of the following –
- (a) admit all or any of the allegations in the charge,
  - (b) deny all or any of the allegations in the charge and verify such denial by way of statutory declaration lodged with the answer.
- (3) The answer, together with any statutory declaration verifying the denial of all or any of the allegations in the charge, is to be lodged at the Registrar’s office.
- (4) The Registrar is to send a copy of the answer and any statutory declaration lodged with the answer to the person or persons making the charge.
- (5) The Registrar is to notify the person or persons making the charge if the person against whom the charge is made fails to lodge an answer within the requisite period.
- (6) A failure by the person against whom the charge is made –
- (a) to admit in an answer any allegation in the charge, or
  - (b) to deny in an answer any allegation in the charge and to verify such denial by way of statutory declaration lodged with the answer,

within the requisite period for lodging an answer to a charge is taken to be a denial of the allegation within the requisite period.

## Discipline Amendment Ordinance 2014

### **53-61. What procedure applies if a charge (not relating to faith, ritual or ceremonial) is admitted?**

- (1) If any wrongdoing alleged in a charge, or part of a charge, that does not relate to faith, ritual or ceremonial, is admitted within the requisite period for lodging an answer to the charge, the Registrar is to refer the charge, or part, to the Tribunal.
- (2) The Diocesan Tribunal is to make a recommendation to the Archbishop concerning the wrongdoing admitted, in accordance with section 60(1) of the 1961 Constitution.
- (3) The Disciplinary Tribunal is to make a recommendation to the relevant church authority concerning the wrongdoing admitted in accordance with clause ~~66~~74.
- (4) A recommendation for disciplinary action must not be made without giving the person against whom the recommendation is proposed to be made an opportunity to be heard in relation to the recommendation.

### **54-62. What procedure applies if a charge (not relating to faith, ritual or ceremonial) is denied?**

If any wrongdoing alleged in a charge, or part of a charge, that does not relate to faith, ritual or ceremonial, is denied within the requisite period for lodging an answer to the charge, the charge or part must be referred by the Registrar to the Tribunal.

### ***Division 3 Proceedings before the Tribunals***

#### **55-63. Right of appearance**

The person charged is entitled to appear before the Tribunal personally or by a legal practitioner.

*Note: As to the payment of the costs of legal representatives, see clause ~~69~~77.*

#### **56-64. Prosecution of charges by person appointed by the Director**

- (1) A charge is to be prosecuted by a person appointed by the Director.
- (2) The person appointed by the Director has a right of appearance before the Tribunal.

#### **57-65. Directions hearing**

- (1) If any allegation in a charge is denied, the Tribunal may hold a preliminary hearing in order to give directions concerning the conduct of the proceedings and the hearing of the charge.
- (2) At a preliminary hearing, the Tribunal may be constituted by the President or a Deputy President sitting alone.

#### **58-66. What happens if the person against whom the charge is made does not appear before the Tribunal?**

If the person against whom a charge is made does not appear before the Tribunal, the Tribunal may hear the charge in the person's absence.

#### **59-67. Public hearing**

- (1) A charge is to be heard in public.
- (2) However, the President or, in the absence of the President, the Deputy President –
  - (a) may, at any time, order that a charge, or a specified part of the proceedings before the Tribunal concerning a charge, is to be heard in private, and
  - (b) must order that a charge, or a specified part of the proceedings before the Tribunal concerning a charge, is to be heard in private if requested to do so by 2 other members of the Tribunal.

#### **60-68. Suppression of names**

- (1) The Tribunal may order that the name of, or other information that could lead to the identification of the person charged, or a person who appears, or is reasonably likely to appear, before the Tribunal is not to be published or broadcast, except in such circumstances as the Tribunal may authorise.
- (2) An order of the Tribunal does not apply to the publication of a report authorised or required under this Ordinance.

## **Discipline Amendment Ordinance 2014**

(3) A church worker who knowingly or recklessly breaches an order made under this clause commits an offence.

### **~~61-69~~ Dismissal of charge**

The Tribunal may dismiss a charge if it is of the opinion that the delay in making the charge causes unfairness to the person against whom the charge is made.

### **~~62-70~~ Amendment of charge**

(1) The Tribunal may permit or direct an amendment to the charge, the particulars of the charge or the answer to the charge.

(2) If an amendment is made to the charge, the particulars of the charge or the answer to the charge, the Registrar is to give notice of the amendment, as soon as practicable after it is made, to the person appointed under clause ~~56(1)~~64(1), the person charged and the person or persons making the charge.

### **~~63-71~~ Onus of proof**

A charge is required to be proved on the balance of probabilities.

### **What are the powers of the Diocesan Tribunal concerning the production of evidence?**

*Note: Section 9 of the Anglican Church of Australia Constitution Act 1961 and section 62 of the 1961 Constitution provide that, for the purpose of securing the attendance of witnesses and the production of documents and for the examination of witnesses on oath or otherwise, the Diocesan Tribunal is taken to be an arbitrator as referred to in the Commercial Arbitration Act 1984 (NSW) and has power to administer an oath or to take an affirmation from any witness and for the same purpose any party to a proceeding before it or any person permitted by it to submit evidence to it is taken to be a party to a reference or submission to arbitration within the meaning of the Commercial Arbitration Act 1984.*

### **~~64-72~~ What are the powers of the Disciplinary Tribunal concerning the production of evidence?**

The Disciplinary Tribunal may receive evidence, examine witnesses and administer oaths and affirmations.

### **~~65-73~~ Other determinations in relation to complaints**

(1) In dealing with a charge which contains any allegation of ~~sexual misconduct committed against, with or in the presence of a child, including grooming of a child, or any serious physical assault of a child~~Reportable Conduct, a Tribunal must before making any other determination or recommendation it is empowered to make, make a finding as to whether the person engaged in any or all of the conduct the subject of each such allegation.

(2) In dealing with a complaint in respect of which information has been included on the National Register, a Tribunal must, after making any other declaration or recommendation that it is empowered to make, determine whether the complaint is false, vexatious or misconceived, or whether it is more likely than not that the subject-matter of the complaint did not occur.

#### **Notes:**

(1) *Section 35(1) of the Child Protection (Working With Children) Act 2012 imposes a duty on a reporting-body (which includes the Anglican Church in New South Wales, including organisations of dioceses) to notify the Children's Guardian of the name and other identifying particulars of any child-related worker against whom the reporting body has made a finding that the worker has engaged in sexual misconduct committed against, with or in the presence of a child, including grooming of a child, or any serious physical assault of a child.*

(2) *If a Tribunal determines that the complaint is false, vexatious or misconceived or that it is more likely than not that the subject-matter of the complaint did not occur, any information about the complaint which has been included on the National Register may be removed from the Register under section 10(1) of the National Register Canon 2007 on the basis that it relates to a notifiable complaint which has been exhausted.*

## **Discipline Amendment Ordinance 2014**

### **What recommendations may the Diocesan Tribunal make?**

**Note:** Section 60(1) of the 1961 Constitution provides that the Diocesan Tribunal shall make such recommendation as it thinks just in the circumstances, but shall not recommend any sentence other than one or more of the following –

- *deposition from orders,*
- *prohibition from functioning*
- *removal from office*
- *rebuke.*

*The Diocesan Tribunal's recommendation is made to the Archbishop.*

### **What action may be taken by the Archbishop concerning the Diocesan Tribunal's recommendation?**

**Note:** Section 60(2) of the 1961 Constitution provides that the Archbishop is to give effect to the Diocesan Tribunal's recommendation. However, if disciplinary action is recommended, the Archbishop may consult with the Diocesan Tribunal and in the exercise of his prerogative of mercy –

- *mitigate the disciplinary action, or*
- *suspend its operation, or*
- *mitigate the disciplinary action and suspend its operation.*

*In each case, the Archbishop is to pronounce the disciplinary action recommended even though he mitigates or suspends it.*

*If disciplinary action or mitigated disciplinary action has been suspended and remains suspended for 2 years, the disciplinary action has no operation after the 2-year period.*

### **66.74. What recommendations may the Disciplinary Tribunal make?**

If the Disciplinary Tribunal determines that a charge has been proved, the Disciplinary Tribunal may make any one or more of the following recommendations to the Archbishop or other relevant church authority –

- (a) that no further action be taken in relation to the complaint,
- (b) that a prohibition order be made against the person in such terms as are specified in the recommendation,
- (c) that the person be removed from a specified position or office,
- (d) such other recommendation as the Disciplinary Tribunal thinks fit.

### **67.75. What action may be taken by the relevant church authority concerning the Disciplinary Tribunal's recommendation?**

(1) The Archbishop or other relevant church authority is to give effect to the recommendations of a Disciplinary Tribunal, subject to this Part.

(2) The Archbishop or other relevant church authority may, after consulting with the Disciplinary Tribunal, in giving effect to a recommendation –

- (a) mitigate its terms, or
- (b) suspend its implementation, or
- (c) mitigate its terms and suspend its implementation.

(3) A recommendation, and any decision made by the Archbishop or other relevant church authority in respect of the recommendation, ceases to have effect if its implementation is deferred for a period of not less than 2 years.

### **68.76. Report of finding**

(1) A determination of the Tribunal, and any recommendation made by the Tribunal, is to be contained in a report –

- (a) that sets out the Tribunal's findings on material questions of fact, and
- (b) that refers to any evidence or other material on which the Tribunal's findings were based, and
- (c) that gives the reasons for the Tribunal's determination.



## **Discipline Amendment Ordinance 2014**

(2) The Tribunal's report is to be given to the Archbishop, any other relevant church authority, the person or persons making the charge, the person charged and, subject to subclause (3), the Standing Committee.

(3) In making a report to the Standing Committee where the charge was not found to be proven, the Tribunal should not disclose the name of, or other information that could lead to the identification of, the person charged or a person who appeared before it.

### **69-77.Costs**

(1) If the person against whom the complaint is made is represented by a legal practitioner, the Tribunal may order that the person's costs of the proceedings before the Tribunal are to be paid.

(2) If the Tribunal makes such an order, the person's costs are to be paid by the Synod in accordance with the scale of costs approved for the time being by the Standing Committee on the recommendation of the Director.

### **70-78.Recommendation as to payment of witnesses expenses**

The Tribunal may make a recommendation to the Director for the payment of the expenses, in an amount determined by the Tribunal, of any person who appeared as a witness before the Tribunal.

### **74-79.Tribunal procedures**

The Tribunal may, subject to this Ordinance, the rules of procedural fairness and any rules made under clause ~~72~~80, determine the procedures applicable for the hearing of a charge.

### **72-80.Rules**

The Archbishop-in-Council may make rules for the conduct of the business of the Tribunal.

## **Part 2 Review of the decision of a Tribunal**

### ***Division 1 The Diocesan Tribunal***

#### **Can there be an appeal from a determination of the Diocesan Tribunal?**

**Note:** *Section 59(4) of the 1961 Constitution provides that –*

- *the person who brings a charge before the Diocesan Tribunal, if dissatisfied with its determination or recommendation, and*
- *the person against whom the charge is brought, if dissatisfied with the recommendation or the disciplinary action imposed on that recommendation,*

*may appeal to the Appellate Tribunal within 28 days after the making of the determination or recommendation, or the imposing of the disciplinary action, or within such further time as the President of the Appellate Tribunal may in writing allow. In the case of disciplinary action comprising the deprivation of or suspension from office, the Archbishop may, on the lodging of the notice of appeal, if he sees fit, intermit the operation of the disciplinary action.*

*Section 60(4) of the 1961 Constitution provides that the provisions of the Constitution with respect to an appeal from a determination of the Diocesan Tribunal extend to and authorise an appeal from a recommendation or the imposition of disciplinary action but do not extend to a ruling of the Diocesan Tribunal of an interlocutory nature.*

*Section 57(2) of the 1961 Constitution provides that an appeal to the Appellate Tribunal is by way of re-hearing.*

### ***Division 2 The Disciplinary Tribunal***

#### **73-81.Application for review**

(1) If the person against whom a charge is made is aggrieved by a decision of the Disciplinary Tribunal that if acted upon by the relevant church authority would, or may have the effect of –

- (a) terminating the person's employment, or
- (b) removing or suspending the capacity of the person to gain income as a church worker,

the person may apply to the Registrar for a review of the decision.

## **Discipline Amendment Ordinance 2014**

(2) If the person making the charge is aggrieved by a decision of the Disciplinary Tribunal the person may apply to the Registrar for a review of the decision.

(3) The application must be made within 21 days after the applicant receives a copy of the Disciplinary Tribunal's report under clause ~~68(2)~~76(2) or such longer period as the Registrar may by notice in writing to the aggrieved person determine.

(4) The application must be in writing and set out the grounds for the review.

### **74.82. Grounds for review**

The grounds on which an application for a review of a decision of the Disciplinary Tribunal may be made are any one or more of the following –

- (a) that a breach of the rules of procedural fairness occurred in relation to the making the decision which materially affected the decision,
- (b) that procedures required to be observed by this Ordinance in relation to the making of the decision were not observed and the non-observance materially affected the decision,
- (c) that the Disciplinary Tribunal did not have jurisdiction to make the decision,
- (d) that the decision was so devoid of any plausible justification that no reasonable Disciplinary Tribunal could have made it.

### **75.83. Stay of proceedings**

An application for a review of a decision of the Disciplinary Tribunal acts as a stay of the decision pending the determination of the review.

### **76.84. Appointment of Reviewer**

(1) As soon as practicable after receiving an application for review, the Registrar must notify the Chancellor.

(2) The Chancellor is to appoint an experienced lawyer to undertake the review and notify the Registrar of the appointment.

(3) Upon the appointment of an experienced lawyer, the Registrar is to obtain an estimate of the fee to be charged by the experienced lawyer in making a determination under this Part.

(4) On receipt of the estimate, the Registrar is to notify the applicant for the review of the amount of the estimate and is to request the applicant to pay half of the estimated fee to the Registrar or a person nominated by the Registrar.

(5) If the applicant does not pay half of the estimated fee within 21 days after receipt of the Registrar's request, the application for the review lapses.

### **77.85. Conduct of review**

(1) A review by an experienced lawyer of the determination of the Disciplinary Tribunal is to be conducted in the manner determined by the experienced lawyer, subject to the process allowing the experienced lawyer to make a determination on the review within a reasonable period after the date that the Registrar receives payment from the applicant for half of the estimated fee.

(2) A review is not to be a re-hearing of the merits, or a new hearing.

(3) The experienced lawyer may make such order as to costs of the review as he or she thinks fit.

### **78.86. Determination on review**

The experienced lawyer who reviews a determination of the Disciplinary Tribunal may do any one or more of the following –

- (a) quash or set aside the determination,
- (b) refer the determination to the Disciplinary Tribunal for further consideration in accordance with such terms and conditions as the experienced lawyer directs,
- (c) declare the rights of the applicant for the review in relation to any matter to which the determination of the Disciplinary Tribunal relates,

**Discipline Amendment Ordinance 2014**

- (d) direct the applicant or the Disciplinary Tribunal to do, or to refrain from doing, anything that the experienced lawyer considers necessary to do justice between the parties.

## Discipline Amendment Ordinance 2014

### CHAPTER 56

#### BREACHES OF FAITH, RITUAL AND CEREMONIAL

##### Part 1 Charges

###### Against whom may a charge be made?

###### Notes:

(1) Section 54(2) of the 1961 Constitution provides that a charge in respect of a breach of faith, ritual or ceremonial may be made against –

- a person licensed by the Archbishop, or
- any other person in holy orders resident in the Diocese.

(2) Clause 3(3)(c) of the Church Ministry Ordinance 1993 makes the failure by a member of this Church (as provided in the 1902 Constitutions) to act in accordance with a provision of a Schedule to that Ordinance an offence. Clause 3(3)(b) of that Ordinance states that, for the purposes of section 54(2) of the 1961 Constitution, the provisions of each Schedule are each a matter of ritual, ceremonial or discipline (as the case may be).

###### Who may make a charge?

**Note:** Section 54(3) of the 1961 Constitution provides that a charge in respect of a breach of faith, ritual or ceremonial may be made by –

- a person appointed by the Archbishop, or
- 5 adult communicant members of this Church resident within the Diocese.

However, if the charge is made against the incumbent of a parish with respect to a breach alleged to have been committed in the parish, the 5 adult communicant members must be bona fide parishioners of the parish.

###### **79-87. Making of charges generally**

Except as provided by this Chapter, Divisions 2 and 3 of Part 1 of Chapter 45 apply to a charge in respect of a breach of faith, ritual or ceremonial in the same way as those Divisions apply to a charge for other wrongdoing.

###### **80-88. Is there a time limit to the making of a charge?**

A charge in respect of a breach of faith, ritual or ceremonial must be made within one year after the alleged commission of the breach.

##### Part 2 The Board of Enquiry

###### Reference of charges to the Board of Enquiry

**Note:** Section 54(3) of the 1961 Constitution provides that, before any charge relating to faith, ritual or ceremonial is heard by the Diocesan Tribunal, it must be referred to the Board of Enquiry appointed by this Ordinance. The charge may proceed to a hearing if the Board allows it as a charge that is proper to be heard.

###### **84-89. The role of the Board of Enquiry**

(1) The Board of Enquiry is to inquire into a charge or part referred to it in order to determine if the charge or part is one that is proper to be heard by the Diocesan Tribunal.

(2) Evidence and representations before the Board of Enquiry are to be given by means of written statements or statutory declarations.

(3) For the purpose of enabling the Board of Enquiry to exercise its functions under this clause it, may –

- (a) require the person or persons making the charge or invite the person charged to provide, by statutory declaration, information concerning the charge, and
- (b) permit or direct an amendment to the charge or the particulars of the charge or the answer to the charge.

(4) A person who provides a statutory declaration may consent to it being given to any other party. If consent is not given, the Board of Enquiry may disregard the contents of the statutory declaration.

## **Discipline Amendment Ordinance 2014**

(5) If an amendment is made to the charge, the particulars of the charge, or the answer to the charge, the Registrar is to give notice of the amendment, as soon as practicable after it is made, to the person charged and to the person or persons making the charge.

(6) The Board of Enquiry may dismiss a charge if it is of the opinion that the delay in making the charge causes unfairness to the person charged.

### **82.90. Report of the Board of Enquiry**

After inquiring into a charge or part of a charge referred to it, the Board of Enquiry is to report in writing to the Registrar whether or not it is of the opinion that the charge or part is a charge that is proper to be heard by the Diocesan Tribunal.

### **83.91. Finding that the charge is a charge that is proper to be heard**

(1) If a majority of the members for the time being of the Board of Enquiry report to the Registrar that they are of the opinion that the charge or part of the charge is a charge that is proper to be heard by the Diocesan Tribunal, the Registrar is –

- (a) to forward the documents relating to the charge and the reports of the members of the Board of Enquiry to the Diocesan Tribunal, and
- (b) to fix a date, time and place for the hearing of the charge or part, and
- (c) to serve notice of the date, time and place fixed for the hearing on the person or persons making the charge and the person charged –
  - (i) personally, or
  - (ii) by posting it in a letter addressed to the person or persons at the residential address of the person or persons last known to the Registrar.

(2) The date fixed for the hearing of a charge or part of a charge must not be less than 30 days after the date of the Registrar's notice.

### **84.92. Finding that the charge is not a charge that is proper to be heard**

(1) If a majority of the members for the time being of the Board of Enquiry report to the Registrar that they are of the opinion that the charge or part of the charge is not a charge that is proper to be heard by the Diocesan Tribunal, the Registrar is to send a copy of the reports of the members of the Board of Enquiry to the person or persons who made the charge and the person charged.

(2) No further proceedings may be taken in relation to a charge or part of a charge to which this clause applies.

(3) However, this clause does not prevent another charge being made against the same person.

### **85.93. Report to Archbishop**

The Registrar is to provide a copy of each report made to the Registrar under this Part to the Archbishop.

### **Can there be an appeal from a determination of the Diocesan Tribunal?**

*Note: Section 54(4) of the 1961 Constitution provides that in matters involving any question of faith, ritual, ceremonial or discipline an appeal lies from the determination of the Diocesan Tribunal to the Appellate Tribunal.*

*Section 59(4) of the 1961 Constitution provides that –*

- *the person who brings a charge before the Diocesan Tribunal, if dissatisfied with its determination or recommendation, and*
- *the person against whom the charge is brought, if dissatisfied with the recommendation or the disciplinary action imposed on that recommendation,*

*may appeal to the Appellate Tribunal within 28 days after the making of the determination or recommendation, or the imposing of the disciplinary action, or within such further time as the President of the Appellate Tribunal may in writing allow. In the case of disciplinary action comprising the deprivation of or suspension from office, the Archbishop may, on the lodging of the notice of appeal, if he sees fit, intermit the operation of the disciplinary action.*

## **Discipline Amendment Ordinance 2014**

*Section 60(4) of the 1961 Constitution provides that the provisions of the Constitution with respect to an appeal from a determination of the Diocesan Tribunal extend to and authorise an appeal from a recommendation or the imposition of disciplinary action but do not extend to a ruling of the Diocesan Tribunal of an interlocutory nature.*

*Section 57(2) of the 1961 Constitution provides that an appeal to the Appellate Tribunal is by way of re-hearing.*

## Discipline Amendment Ordinance 2014

### CHAPTER 67 EXEMPT CONDUCT

#### **86-94. Declaration of exemption following disclosure of past conduct**

(1) A person referred to in subclause (2) may make a full disclosure to the Archbishop in writing that the person has engaged in conduct that may be the subject of a complaint under this Ordinance.

- (2) If the disclosure is made –
- (a) by a person prior to ordination by or on behalf of the Archbishop as a deacon, or
  - (b) by a person who is not ordained prior to being issued with an authority under the *Deaconesses, Readers and Other Lay Persons Ordinance 1981* for the purpose of undertaking paid work, or
  - (c) by a person who has been ordained, otherwise than by or on behalf of the Archbishop, of conduct committed before ordination as a deacon, prior to being first licensed by the Archbishop,

the Archbishop, with the concurrence of the PSC, may declare that the conduct cannot be the subject of a complaint or a charge under this Ordinance.

(3) A declaration has effect for the purposes of this Ordinance according to its terms.

(4) If the Archbishop makes a declaration, any information disclosed to the Archbishop for the purposes the declaration is to be treated as Exempt Information for the purposes of the National Register Canon 2007.

**Note:** *Under section 8 of the National Register Canon 2007, Exempt Information is not information that is to be notified to the General Secretary for inclusion on the National Register.*

#### **87-95. Circumstances in which a declaration cannot be made**

The Archbishop must not make a declaration under this Chapter in respect of a person who has been convicted of a disqualifying offence listed in Schedule 2 of the *Child Protection (Working with Children) Act 2012*.

**Note:** *Disqualifying offences in Schedule 2 of the Child Protection (Working with Children) Act 2012 include the murder or manslaughter of a child, intentional wounding or committing grievous bodily harm to a child, abandonment of a child, serious sex offences, incest, bestiality and offences related to child pornography/child abuse material. In general, these are sex offences or offences involving children which are punishable by imprisonment of 12 months or more.*

#### **88-96. Requirements to be satisfied before a declaration can be made**

(1) The Archbishop must not make a declaration under this Chapter in respect of the conduct of a person unless the Archbishop and the PSC consider that the person –

- (a) has made any appropriate reparation for the conduct, and
- (b) does not pose a risk to the safety of any person, and
- (c) is fit to be ordained, to be issued with an authority or to be licensed by the Archbishop, as the case may be.

(2) In deciding whether or not a person poses a risk to the safety of any person, the following matters are to be taken into consideration –

- (a) the circumstances in which the conduct occurred,
- (b) the seriousness of the conduct,
- (c) the age of the person at the time of the conduct,
- (d) the age of each victim at the time,
- (e) the difference in ages between the person and each victim,
- (f) the person's criminal record, if any,
- (g) such other matters as are considered relevant.

## **Discipline Amendment Ordinance 2014**

### **89.97. Effect of refusal to make a declaration**

If the Archbishop refuses to make a declaration under this Chapter in respect of the conduct of a person, the person is not entitled for 5 years to apply again for a declaration in respect of that conduct.



## Discipline Amendment Ordinance 2014

### CHAPTER 78 MISCELLANEOUS

#### **90-98. Confidentiality of information**

A church authority, the Director, a member of the PSC, a person employed or engaged in work related to the functions of the Director or the PSC, a member of the Diocesan Tribunal or the Disciplinary Tribunal and a member of the Board of Enquiry must not divulge information that comes to his or her knowledge by virtue of his or her office or position, except –

- (a) in the course of carrying out the duties of that office or position, or
- (b) as may be authorised by or under this Ordinance, or
- (c) in any proceedings before a diocesan tribunal, a disciplinary tribunal, a provincial tribunal, the Appellate Tribunal or the Special Tribunal, or
- (d) as may be required by law, or
- (e) to any insurer or insurance broker of a church body or church authority where the information may give rise to or be relevant to a claim for indemnity by the church body or church authority against the insurer or is relevant to obtaining or continuing insurance cover.

#### **94-99. Disclosure by PSC to equivalent bodies in other dioceses**

The PSC must disclose to an equivalent body in another diocese relevant details of information in its possession concerning the alleged conduct of a church worker –

- (a) which is information that is relevant to, or arises during the course of, an investigation being undertaken by the PSC where the PSC knows that the church worker is residing in the diocese of the equivalent body, or
- (b) which is information concerning conduct alleged to have occurred in the diocese of the equivalent body,

and is to co-operate with any such equivalent body.

#### **100. Findings of certain other bodies may be treated as conclusive**

Any findings made by a disciplinary body of another diocese or a state administrative or judicial body, that have not been overturned on appeal, may be treated as conclusive by a person performing functions under this Ordinance.

#### **101. Effect of prohibition orders**

Subject to clause 31, a person who is subject to a prohibition order is, despite the provisions of any other ordinance, ineligible for election or appointment to any position or office to which the order applies, and any such office or position that the person is or was elected or appointed to becomes vacant.

#### **92-102. Indemnity**

The Synod of the Diocese indemnifies a member of the PSC, an Adjudicator, the Diocesan Tribunal, the Disciplinary Tribunal or the Board of Enquiry for an act or omission of the member, PSC, Tribunal or Board in good faith and in the exercise or purported exercise of a function under this Ordinance.

#### **93-103. Service of documents**

- (1) A document required to be served under this Ordinance on a person may be served –
  - (a) personally, or
  - (b) by posting a copy of the document by pre-paid post to the person at the person's proper address.
- (2) The proper address of a person is the address for service of the person but, if the person has no address for service, the person's last known residential address.
- (3) Service of a document that is posted by pre-paid post is taken to be effected 7 days after posting.
- (4) In this clause, service of a document includes the giving of a notice.

## **Discipline Amendment Ordinance 2014**

### **94-104. Exclusion of other bodies**

Other than the Board of Enquiry, the Diocesan Tribunal and the Disciplinary Tribunal, no other body is competent to hear or determine a matter relating to a charge made under this Ordinance until –

- (a) a majority of the members for the time being of the Board of Enquiry report to the Registrar that they are of the opinion that the charge is not a charge proper to be heard, or
- (b) the Diocesan Tribunal has dealt with the charge to finality and, if appropriate, the Archbishop has given effect to the Diocesan Tribunal's recommendation relating to the charge, or
- (c) the Disciplinary Tribunal has dealt with the charge to finality and, if appropriate, the relevant church authority has given effect to the Disciplinary Tribunal's recommendation relating to the charge.

### **95-105. Rights of employers**

Nothing in this Ordinance affects any right of an employer to terminate the employment of an employee.

### **96-106. Repeals**

- (1) The *Tribunal Ordinance 1962* is repealed.
- (2) The *Church Discipline Ordinance 2002* is repealed.

### **97-107. Amendment of the Relinquishment of Holy Orders Ordinance 1994**

The *Relinquishment of Holy Orders Ordinance 1994* is amended –

- (a) by omitting from clause 4(1) all the matter following the word 'except' and by inserting instead the words 'the *Discipline Ordinance 2006*.' , and
- (b) by omitting from clause 5 all matter including and following the word 'except' and by inserting instead the words 'and the person shall, in relation to the holding out, be taken to be a person in holy orders for the purposes of the *Discipline Ordinance 2006*.'.

### **98-108. Amendment of the Offences Ordinance 1962**

The *Offences Ordinance 1962* is amended by omitting clause 3 and inserting instead the following –

#### **"Specified offences**

3. (1) The following are specified as offences for which a charge may be heard and determined by the Diocesan Tribunal (in addition to those specified by canon) –
  - (a) Sexual abuse.
  - (b) Child abuse.
  - (c) Conviction in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or upwards or a conviction outside New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable.

#### **Notes:**

(1) *Other offences for which a charge may be heard and determined by the Diocesan Tribunal are –*

- *an offence under Clause 5 of the Relinquishment of Holy Orders Ordinance 1994, and*
- *an offence under clause 12 of the General Synod – Holy Orders, Relinquishment and Deposition Canon 2004 Adopting Ordinance 2005, and*
- *an offence under clause 9 or 24 of the Discipline Ordinance 2006.*

(2) *Section 54(2) of the 1961 Constitution provides that a charge in respect of a breach of faith ritual or ceremonial may be made against a person*

## Discipline Amendment Ordinance 2014

*licensed by the Archbishop or any other person in holy orders resident in the Diocese.*

(3) *Clause 3(3)(c) of the Church Ministry Ordinance 1993 makes the failure by a member of this Church (as provided in the 1902 Constitutions) to act in accordance with a provision of a Schedule to that Ordinance an offence. Clause 3(3)(b) of that Ordinance states that, for the purposes of section 54(2) of the 1961 Constitution, the provisions of each Schedule are each a matter of ritual, ceremonial or discipline (as the case may be).*

(2) The following are specified as offences for which a charge may be heard and determined by the Disciplinary Tribunal –

- (a) Unchastity.
- (b) Drunkenness.
- (c) Habitual and wilful neglect of the duties of the person's position after written admonition in respect thereof by the appropriate church authority.
- (d) Wilful failure to pay just debts.
- (e) Conduct, whenever occurring –
  - (i) which would be disgraceful if committed by a person holding the position held by the person against whom the allegation is made or in which the person acts, and
  - (ii) which at the time the charge is preferred productive, or if known publicly would be productive, of scandal or evil report.
- (f) Sexual abuse.
- (g) Child abuse.
- (h) Conviction in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or upwards or a conviction outside New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable.

**Note:** *Other offences for which a charge may be heard and determined by the Disciplinary Tribunal are offences under clauses 9 and 24 of the Discipline Ordinance 2006.*

(3) For the purposes of subclauses (1) and (2), 'church authority', 'Diocesan Tribunal', 'Disciplinary Tribunal', 'sexual abuse' and 'child abuse' have the same meanings as in the Discipline Ordinance 2006."

### **99-109. Savings and transitional provisions**

(1) Nothing in this Ordinance affects any proceeding commenced, but not completed, before the date on which this Ordinance commences under the *Tribunal Ordinance 1962* or the *Church Discipline Ordinance 2002* and any such proceeding may be continued and completed as if this Ordinance had not been made.

(2) The repeal of the *Tribunal Ordinance 1962* does not affect or invalidate any act done or election or appointment made under that Ordinance.

(3) All persons elected or appointed under the *Tribunal Ordinance 1962* and holding office immediately before the repeal of that Ordinance are to remain in office as if they had been elected or appointed under this Ordinance, except as provided by this clause.

(4) If the persons remaining in office pursuant to subclause (3) who are elected to be members of the Diocesan Tribunal do not include a woman then, as soon as practicable after the commencement of this Ordinance, the Standing Committee may appoint a woman as an additional member of the Diocesan Tribunal and, subject to clause 447-127, such person holds office until the first session of the 48<sup>th</sup> Synod.

(5) The persons remaining in office pursuant to subclause (3) are taken to be members of the Disciplinary Tribunal while holding office as members of the Diocesan Tribunal.

## **Discipline Amendment Ordinance 2014**

(6) The supplemental list for the Diocesan Tribunal and the supplemental list for the Board of Enquiry are abolished.

(7) The lay persons elected or appointed as members of the Board of Enquiry under the *Tribunal Ordinance 1962* and holding office immediately before the repeal of that Ordinance cease to hold office on that repeal.

(8) As soon as practicable after the date on which this Ordinance commences, the Standing Committee is to elect, out of the lay persons who cease to hold office under subclause (7), 2 persons to be members of the Board of Enquiry. If, at the time of the election, there are 2 or less lay persons eligible for election, any such lay person who is eligible for election is taken to be elected under this subclause and any other lay person or lay persons necessary to be elected to constitute the Board of Enquiry may be elected by the Standing Committee.

(9) The person holding office as the Director under the *Church Discipline Ordinance 2002* immediately before the date on which this Ordinance commences is taken to have been appointed as the Director under this Ordinance and holds office on the same terms and conditions as those which applied immediately before the repeal of the *Church Discipline Ordinance 2002*.

(10) A declaration made under clause 18 of the *Church Discipline Ordinance 2002* is taken to have been made under Chapter 67 of this Ordinance.

(11) This Ordinance extends to conduct occurring before the date on which this Ordinance commences.

### **100.110. Commencement**

Except for this clause, this Ordinance commences on a date declared by the Standing Committee by resolution.

## **Discipline Amendment Ordinance 2014**

### **CHAPTER 89**

#### **ADMINISTRATION**

##### **Part 1 The Director**

###### **401.111. The Director**

- (1) The Archbishop, taking into account any recommendation of the Safe Ministry Board, may appoint a suitably qualified person to be the Director for the purposes of this Ordinance.
- (2) Any person who is the Director and is a member of the Safe Ministry Board at the time a recommendation is made to the Archbishop under subclause (1) must not vote or speak as a member of the Safe Ministry Board in relation to the making of the recommendation.
- (3) The Director is to be appointed on such terms and conditions as the Archbishop determines.
- (4) If, for any reason, the Director is unable or unwilling to exercise or perform any power, authority, duty or function of the Director under this Ordinance, the Archbishop may appoint another suitably qualified person to exercise or perform the power, authority, duty or function.

###### **402.112. Relationship between the Director and the Archbishop**

- (1) The Director is to inform the Archbishop of –
  - (a) any information known to the Director, or any reasonable belief held by the Director, that a church worker has engaged in conduct which may be the subject of a complaint, and
  - (b) any response made by a church worker to an allegation that is, or could be, the subject of a complaint.
- (2) The Director is to provide the Archbishop with such further information as the Archbishop may reasonably require.
- (3) The Archbishop is to provide the Director with such information as the Director may reasonably require.

###### **403.113. The Director's entitlement to information held by certain persons**

A person who, or body which, appointed a church worker to an office or position held by the church worker during any period relevant for the purposes of an allegation made against the church worker that is, or could be, the subject of a complaint is to provide the Director with such information as the Director may reasonably require.

###### **404.114. The Director to report annually to the Standing Committee**

Before 31 August each year, the Director is to make a report to the Standing Committee as to the action taken under this Ordinance during the period of 12 months ending on the preceding 30 June and provide a copy of the report to the Safe Ministry Board.

##### **Part 2 The Professional Standards Committee**

###### **405.115. Establishment of the PSC**

There is to be a Professional Standards Committee for the Diocese.

###### **406.116. Appointment of members**

- (1) The Archbishop-in-Council is to appoint at least 3 persons to be the members of the PSC.
- (2) The persons appointed as members of the PSC are to include –
  - (a) an experienced lawyer, and
  - (b) a person who has been a member of the clergy for not less than 10 years, and
  - (c) a person who is certified by the Safe Ministry Board as having other qualifications or experience appropriate to the discharge of the office of a member of the PSC, such as child protection, social work or psychiatry.
- (3) The PSC is to include at least one person who is not a member of this Church and, so far as it is reasonably practicable, is to have an equal number of men and women.

## **Discipline Amendment Ordinance 2014**

### **407-117. Term of office**

Subject to clause ~~408-118~~, a member of the PSC holds office until the first meeting of the Standing Committee which next follows the first day of the first ordinary session of the next Synod provided that the member continues to hold office until his or her successor is appointed.

### **408-118. Casual vacancies**

- (1) The office of a member of the PSC is vacated if –
  - (a) the member –
    - (i) dies, or
    - (ii) resigns by notice in writing to the Diocesan Secretary, or
    - (iii) becomes mentally incapacitated, or
    - (iv) becomes an insolvent under administration, or
    - (v) ceases to reside permanently in the Diocese, or
  - (b) the Archbishop-in-Council revokes the appointment.
- (2) The Archbishop-in-Council may fill a casual vacancy in the office of a member of the PSC.

### **409-119. Chairperson**

- (1) The Archbishop-in-Council is to appoint one of the members of the PSC to be the chairperson of the PSC.
- (2) The chairperson is to preside at all meetings of the PSC at which he or she is present.
- (3) In the absence of the chairperson, the members present at a meeting are to elect a member to be the chairperson.
- (4) At meetings of the PSC, the chairperson has a deliberative vote only.

### **410-120. Meetings**

- (1) The PSC may meet from time to time as determined by the chairperson or a majority of the members.
- (2) The PSC may conduct its business in such manner as it thinks fit.
- (3) Without limiting subclause (2), the PSC may conduct its business by telephone or electronic communication.
- (4) The Director is entitled to attend and speak at meetings of the PSC.

### **411-121. Quorum**

A majority of the members for the time being of the PSC constitutes a quorum at a meeting of the PSC.

### **412-122. Decisions**

- (1) A decision of the majority of the members of the PSC at a meeting at which a quorum is present is a decision of the PSC.
- (2) A decision taken other than at a meeting of the PSC, if supported by a majority of the members of the PSC, is a decision of the PSC.

## **Part 3 The Diocesan Tribunal**

### **Constitution of the Diocesan Tribunal**

*Note: Section 53 of the 1961 Constitution provides that there is to be a Diocesan Tribunal for the Diocese.*

### **Who are the members of the Diocesan Tribunal?**

*Note: Section 54(1) of the 1961 Constitution provides that the Diocesan Tribunal is to consist of –*

- *a president (who is to be the Archbishop) or a deputy president appointed by the Archbishop, and*

## **Discipline Amendment Ordinance 2014**

- *not less than 2 other members as may be prescribed by ordinance of the Synod of the Diocese.*

### **413-123. Archbishop's appointment of the Deputy President**

- (1) A person is qualified for appointment as the Deputy President if the person is an experienced lawyer.
- (2) The appointment by the Archbishop of the Deputy President is to be in writing signed by the Archbishop.
- (3) The appointment continues until it is revoked in writing by the Archbishop unless the appointment is expressed to be for the purpose of hearing a particular charge or charges or for a specified period of time.

### **414-124. Constitution of the Diocesan Tribunal for the purpose of hearing and determining a charge**

- (1) Subject to subclauses (2) and (3), for the purpose of hearing and determining a charge the Diocesan Tribunal is to be constituted by –
  - (a) the President or the Deputy President, and
  - (b) one member of the Diocesan Tribunal who is a member of the clergy appointed by the Registrar, and
  - (c) one member of the Diocesan Tribunal who is a lay person appointed by the Registrar.
- (2) For the purpose of hearing and determining a charge alleging an offence of child abuse or sexual abuse or an offence under clause 9, the Diocesan Tribunal is to include at least one man and one woman.
- (3) For the purpose of hearing and determining a charge alleging a breach of faith, ritual or ceremonial, the Diocesan Tribunal may be constituted by all its members.
- (4) Nothing in this clause affects clause ~~5765~~.

### **415-125. Election of members**

- (1) During the first session of each Synod, the members of Synod voting collectively are to elect 5 members of the clergy, each of whom has been a member of the clergy for not less than 10 years, and 5 lay persons to be members of the Diocesan Tribunal.
- (2) The members of the Diocesan Tribunal elected by the Synod must include at least two experienced lawyers and at least two men and two women.

### **416-126. Term of office**

- (1) An elected member of the Diocesan Tribunal holds office until the member's successor is elected or until the office is vacated.
- (2) However, if a member's successor is elected after the Diocesan Tribunal has commenced hearing a charge and before the Diocesan Tribunal's recommendation concerning the charge is made, the member continues to hold office until the recommendation is made.

### **417-127. Casual vacancies**

The office of an elected member of the Diocesan Tribunal is vacated if –

- (a) the member –
  - (i) dies, or
  - (ii) resigns by notice in writing given to the Diocesan Secretary, or
  - (iii) becomes mentally incapacitated, or
  - (iv) becomes an insolvent under administration, or
  - (v) ceases to reside permanently in the Diocese, or
- (b) the Standing Committee declares, by resolution with a majority of not less than two-thirds of the members of the Standing Committee present and entitled to vote, the member's office to be vacated because of the member's refusal,

## **Discipline Amendment Ordinance 2014**

neglect or inability to perform functions as a member or because of any other reason so declared.

### **~~418.128.~~ How are casual vacancies filled?**

(1) The Standing Committee is to appoint a member of the clergy or a lay person (as the case requires) to fill a casual vacancy in the office of an elected member of the Diocesan Tribunal.

(2) A person appointed under this clause holds office for the balance of his or her predecessor's term of office, subject to clauses ~~416(2)~~126(2) and ~~417~~127.

### **~~419.129.~~ Ineligibility of members of the Board of Enquiry**

A person who is a member of the Board of Enquiry is not eligible to be a member of the Diocesan Tribunal.

### **~~420.130.~~ Disqualification of certain members from hearing charges**

(1) An elected member is disqualified from hearing a charge that concerns the member or where the member is the person or a person who has made a charge.

(2) If an elected member is disqualified under this clause, a person is to be appointed for the purpose only of hearing the particular charge in the same way as if the disqualified member had vacated office.

### **~~424.131.~~ Decision of the Diocesan Tribunal**

A decision supported by a majority of the votes of the members who constitute the Diocesan Tribunal is a decision of the Diocesan Tribunal.

### **~~422.132.~~ Voting on certain questions of evidence or procedure**

The President or, in the absence of the President, the Deputy President has a casting vote as well as a deliberative vote if voting on a question of evidence or procedure is equal.

## **Part 4 Disciplinary Tribunal**

### **~~423.133.~~ Members of Disciplinary Tribunal**

The members of the Disciplinary Tribunal are the members for the time being of the Diocesan Tribunal and include a person appointed by the Archbishop as Deputy President of the Diocesan Tribunal.

### **~~424.134.~~ Establishing a Disciplinary Tribunal**

(1) The Registrar may establish a Disciplinary Tribunal to hear and determine a charge.

(2) Subject to subclauses (3) and (4), a Disciplinary Tribunal comprises 3 members appointed by the Registrar.

(3) The members of a Disciplinary Tribunal must include –

(a) an experienced lawyer who is to be the chairperson of the Disciplinary Tribunal, and

(b) a member of the clergy.

(4) For the purposes of hearing and determining a charge alleging an offence of child abuse or sexual abuse or an offence under clause 9, the Disciplinary Tribunal is to include at least one man and one woman.

### **~~425.135.~~ Notice of establishment of Disciplinary Tribunal**

(1) The Registrar is to give written notice of the establishment of a Disciplinary Tribunal to the complainant or complainants and the person against whom the complaint, or each complaint, is made as soon as practicable after the Disciplinary Tribunal is established.

(2) The Registrar is to provide the Disciplinary Tribunal and the person against whom the complaint, or each complaint, is made with particulars of the complaint or complaints.

## **Part 5 Board of Enquiry**

### **~~426.136.~~ Election of members**

During the first session of each Synod, the members of Synod voting collectively are to elect 1 member of the clergy and 2 lay persons to be members of the Board of Enquiry.



## **Discipline Amendment Ordinance 2014**

### **427-137. Appointment of members**

- (1) The Archbishop is to appoint 1 member of the clergy and 1 layperson to be members of the Board of Enquiry.
- (2) Each appointment is to continue until revoked in writing by the Archbishop unless the appointment is expressed to be for the purpose of hearing a particular charge or charges or for a specified period of time.

### **428-138. Term of office**

- (1) A member of the Board of Enquiry holds office until the member's successor is appointed or elected or until the office is vacated.
- (2) However, if a member's successor is appointed or elected after the Board of Enquiry has commenced an inquiry into a charge or part of a charge and before the Board of Enquiry's report of its inquiry is made, the member continues to hold office until the report is made.

### **429-139. Casual vacancies**

The office of a member of the Board of Enquiry is vacated if –

- (a) the member –
  - (i) dies, or
  - (ii) resigns by notice in writing to the Diocesan Secretary, or
  - (iii) becomes mentally incapacitated, or
  - (iv) becomes an insolvent under administration, or
  - (v) ceases to reside permanently in the Diocese, or
- (b) in the case of a member elected by Synod, the Standing Committee declares, by resolution with a majority of not less than two-thirds of the members of the Standing Committee present and entitled to vote, the member's office to be vacated because of the member's refusal, neglect or inability to perform functions as a member or because of any other reason so declared, or
- (c) in the case of a member appointed by the Archbishop, the Archbishop revokes the appointment.

### **430-140. How are casual vacancies filled?**

- (1) In the case of a person elected by Synod, the Standing Committee is to appoint a member of the clergy or a lay person (as the case requires) to fill a casual vacancy in the office of a member of the Board of Enquiry.
- (2) A person appointed under this clause holds office for the balance of his or her predecessor's term of office, subject to clauses ~~428(2)~~138(2) and ~~429~~139.

### **431-141. Disqualification of certain members from inquiring into charges**

- (1) A member is disqualified from inquiring into a charge or part of a charge that concerns the member or where the member is the person or a person who has made the charge.
- (2) If a member is disqualified under this clause, a person is to be appointed for the purpose only of inquiring into the particular charge or part of the charge in the same way as if the disqualified member had vacated office.

### **432-142. Quorum**

The quorum for a meeting of the Board of Enquiry is 3 members, one of whom is a member of the clergy and two of whom are lay persons.

**Discipline Amendment Ordinance 2014**

**SCHEDULE 1**

**Diocesan/Disciplinary Tribunal**

**Charge**

**(Made by a person appointed by the Archbishop)**

I, \_\_\_\_\_ of \_\_\_\_\_, having been appointed by the  
| Archbishop of Sydney under clause 4553 of the *Discipline Ordinance 2006*, claim that  
of \_\_\_\_\_,  
being

- \* a person licensed by the Archbishop of Sydney
- \* a person in holy orders resident in the Diocese of Sydney,
- \* a member of the clergy, the act of whom which gave rise to this charge occurred in the Diocese of Sydney
- \* a member of the clergy who was licensed by the Archbishop of Sydney or was resident in the Diocese of Sydney within 2 years before this charge was laid
- \* a member of the clergy who is in prison as a convicted person at the time this charge is laid, but within 2 years before such imprisonment was licensed by the Archbishop of Sydney or was ordinarily resident in the Diocese of Sydney
- \* a church worker who is not subject to the jurisdiction of the Diocesan Tribunal

has committed

- \* the following offence, namely
- \* a breach of faith/ritual/ceremonial/discipline

particulars of which are:

Signed:

Date:

The address at which documents may be served on the person making this charge is:

- \* delete whichever is not applicable.



