

## 22/17 Appointment of Assistant Ministers and Stipendiary Lay Workers

(A report from the Standing Committee.)

### Purpose of the report

1. The purpose of this report is respond to Synod resolution 22/17 in respect to the appropriate terms and conditions for the appointment of assistant ministers and employment of stipendiary lay workers.

### Recommendations

2. Synod receive this report.
3. Synod –
  - (a) encourage rectors to undertake training in staff management,
  - (b) request the Standing Committee to amend the *Assistant Ministers Ordinance 2017* by –
    - (i) omitting the words “where a genuine and recorded performance management program or similar has been unsuccessful in resolving the issue or issues” in clause 3(3)(b)(i),
    - (ii) inserting a new clause to state that if the Parish requires the Assistant Minister to live in a certain location, that the housing arrangements for the Assistant Minister must be approved as suitable by the Archbishop,
    - (iii) inserting a new clause to require rectors to consult with the Regional Bishop before making a communication to the parish about the termination of the appointment of an Assistant Minister licensed to the Parish, and
  - (c) request the Archbishop-in-Council to consider approving under clause 7 of the *Assistant Ministers Ordinance 2017*, the attached guidelines with respect to terminating the appointment of Assistant Ministers, and
  - (d) request rectors and wardens to use the standard-form letters issued by SDS for the employment of Lay Ministers and the appointment of Assistant Ministers.

### Background

4. At its session in 2017, the Synod passed resolution 22/17 in the following terms –

“Synod hereby resolves to request Standing Committee to appoint a committee to review and report to the next session of Synod on the appropriate terms and conditions for appointment of assistant ministers and stipendiary lay workers to parishes and other church organisations including, inter alia, the following matters –

  - (a) the applicability of a probationary period,
  - (b) circumstances where a fixed term contract may apply,
  - (c) appropriate review mechanisms for performance,
  - (d) appropriate mechanisms for transition from being a Deacon to a Presbyter in the case of assistant ministers,
  - (e) terms and conditions for the appointment of assistant ministers and stipendiary lay workers,
  - (f) terms and conditions in relation to the termination of assistant ministers and stipendiary lay workers,
  - (g) appropriate dispute resolution mechanisms in the event of a breakdown in relationship between the Senior Minister and the Assistant Minister or the stipendiary lay worker,
  - (h) comparison of these matters with any relevant employment legislation, and such other matters as the Committee may consider appropriate for consideration by Synod.”
5. At its meeting on 26 March 2018, the Standing Committee appointed a Committee (the Committee) to undertake the work requested in resolution 22/17. The Committee is comprised of Bishop Chris Edwards (Chair), the Rev Chris Holding, Mr Luke Scandrett, Mr Mark Streeter, Mrs Belinda Whitfield, the Rev Paul Grimmond, Ms Yvette McDonald, the Rev Raj Gupta, and the Rev Susan An. The Committee was also given power to co-opt additional members. None were co-opted.
6. The Committee met three times, on 5 June 2018, 2 August 2018 and 10 September 2018.

7. The Committee acknowledges the contributions to its work made by the Centre for Ministry Development at Moore College (CMD) and also Ministry Training and Development (MTD).
8. This report substantially follows the structure of Synod resolution 22/17.

### Context

9. Employment arrangements in Australia have undergone significant changes in the last two decades. In 2005, the *Workplace Relations Act 1996* (Cth) was significantly amended as a result of the “WorkChoices” policies of the Howard Government. In 2009, “WorkChoices” was replaced by the *Fair Work Act 2009* (Cth). In all this time the Assistant Ministers Ordinance remained unamended.
10. Changes to the various Acts have affected the employment terms and conditions for Lay Ministers and other church workers. Assistant Ministers (clergy), who are exempt from the *Fair Work Act 2009* by virtue of the fact that they are office holders, have had few changes.
11. This has resulted in something of a mixed-economy when it comes to staff arrangements in some of our parishes. For instance Lay Ministers, serving alongside Assistant Ministers, having similar responsibilities as their clergy colleagues, have had to serve under terms and conditions that are quite different from those provided to the clergy. These differences can appear inequitable. They have certainly caused angst when parishes have determined remuneration and benefits packages and they have been particularly unhelpful for some when positions have been terminated. Such differences are not only felt by the individual with the role. The nature of parish ministry means their family is often also affected.
12. Some situations have not been helped by the lack of clarity around the role the Assistant Minister or Lay Minister is required to perform. Clear role descriptions are not common in our parishes and performance reviews have been too irregular to be helpful. Often added to this is a lack of clarity around who has responsibility for role descriptions and for conducting a staff member’s review. Is it the responsibility of the rector or the wardens?
13. Misunderstandings have often resulted. In some cases positions have been terminated. The lack of clarity around how a termination should be effected has resulted in some of these terminations causing severe distress to those involved.
14. All this has led us to the point where our policies and guidelines need to be reviewed and changes implemented so we can assist these relationships to be Christ honouring.

### Terminology

15. In this report the term “Assistant Minister” refers to a member of clergy licensed to the office of Assistant Minister or Senior Assistant Minister in a parish, and the term “Lay Minister” refers to a lay person employed as a member of staff in a parish and holding an authority under the *Authorisation of Lay Ministry Ordinance 2015*.
16. Synod resolution 22/17 refers to “other Church organisations” in addition to parishes. Assistant Ministers and Lay Ministers hold offices or positions within parishes. There may be clergy who are ordained as deacons who are appointed to “other Church organisations” (for example, as chaplains). They are not Assistant Ministers. This report therefore only deals with appointments in parishes.

### Assumptions

17. In undertaking its work, the Committee has operated on the basis of the traditional understanding that Assistant Ministers are officeholders under the law, and not employees. Notwithstanding this, some Assistant Ministers may also have contractual entitlements.
18. Lay Ministers perform duties as employees under a contract of service. The wardens of the principal or only church of a parish appoint and remove Lay Ministers with the concurrence of the rector. The typical arrangement in parishes is that the wardens are the employer and that under the terms of the employment contract, the rector directs the Lay Minister concerning their day to day duties.

### Vulnerabilities in the Assistant Ministers and Lay Ministers roles

19. Assistant Ministers and Lay Ministers experience certain vulnerabilities in their roles that should be recognised at the outset of this report. These include –
- Appointments are not permanent and ongoing appointment may be dependent on factors that are not related to the performance of the Assistant Minister or the Lay Minister, such as ongoing funding being available and the strategic direction of the parish.
  - There is no one that an Assistant Minister or Lay Minister can appeal to who has any real authority over the rector, except in extreme cases where there is misconduct that can be dealt with under the *Ministry Standards Ordinance 2017*.

- Assistant Ministers (and often also Lay Ministers) are generally required to live in or near the parish, or if not required, the practical realities of the role make this necessary. An Assistant Minister moving to a new parish will often need to relocate to a new home and enrol their children in a new school, among other significant life changes.
- There is a limited pool of parish positions available, particularly if an Assistant Minister or Lay Minister has their appointment terminated mid-year.
- Rectors control the communication channels in a parish. A rector will often feel the need to justify their decision to terminate the appointment of an Assistant Minister or Lay Minister. This can affect the reputation and standing of Assistant Ministers.

20. These vulnerabilities give rise to a significant power imbalance between rectors, who have tenure, and Assistant Ministers, who do not.

21. Notwithstanding this, to some extent these factors are part of the inherent cost of parish ministry, and mission generally. To some extent, they are also factors that are common with people in many lines of work.

22. The Committee does consider that more regard should be given to these vulnerabilities when appointing Assistant Ministers and Lay Ministers, and when making decisions that may adversely affect them. The Committee has sought to take these vulnerabilities into account in making its recommendations.

### **Probationary Periods**

#### *Lay Minister*

23. Probation periods are designed to determine whether an employee is suitable for ongoing employment. The length of the probation period is determined by the employment contract. Typically, the period of notice to terminate the employment contract is shorter in the probation period for both the employer and employee.

24. Under the *Fair Work Act 2009*, a terminated employee is not able to make an application for unfair dismissal within the first 6 months of employment, or 12 months in the case of an employer with fewer than 15 employees (the qualifying period). However, potentially there are other avenues a terminated employee can pursue if they believe they have been treated improperly.

25. In view of the qualifying period for unfair dismissal, it is not strictly necessary to include a probationary period in the employment contract. However having an express period of probation can be helpful in setting expectations.

26. The standard employment contract for Lay Ministers recommended to parishes by SDS contains a probation period of 6 months.

27. Best practice Probation Management Programs include the opportunity for feedback, performance improvement and regular coaching before a termination decision is taken and communicated.

#### *Assistant Ministers*

28. An Assistant Minister is unable to seek a remedy in relation to termination of their appointment under the *Fair Work Act 2009*.

29. Currently, under the *Assistant Ministers Ordinance 2017*, an Assistant Minister can be terminated with 3 months' notice (or longer in the case of a Senior Assistant Minister), subject to the process set out in clause 3(3) of the Ordinance having been followed.

30. Given the notice period, and noting the significant investment of an Assistant Minister (and potentially their family), the Committee does not consider anything would be gained by introducing a probation period for an Assistant Minister by ordinance.

### **Recruitment processes**

31. Good recruitment processes reduce the need to rely on a probation period to determine if a person is unsuitable for ongoing employment. This should include prayer, and may include developing clear position descriptions prior to recruitment, appropriate advertising of positions, receiving of CVs, standardised, competency-based interviews, note taking during the interview, a panel of interviewers to gain multiple perspectives, reference checking, psychometric testing, making a formal offer and appropriate induction.

32. The Committee is aware that the Centre for Ministry Development has a training module on staff management in the parish context that includes a component on recruitment.

## Fixed Term Appointments

### *Lay Ministers*

33. The wardens and rector of a parish have flexibility to determine whether a Lay Minister position should be offered on a fixed term basis.
34. SDS has produced a fixed term letter of employment for Lay Ministers that can be used by parishes.
35. A Lay Minister cannot exercise the office of lay minister in a church unless authorised to do so by an authority issued by the Archbishop under the *Authorisation of Lay Ministry Ordinance 2015*. The authority does not confer any rights on the lay minister, but acts as a permission for the Lay Minister to perform certain functions in ministry, having subscribed to the doctrines of the Anglican Church and received a clearance from the Professional Standards Unit.
36. Fixed terms may be useful in the following circumstances –
- Where funding for an appointment may not be ongoing. This sets an appropriate expectation that the role is for a limited time only and there is no expectation of a notice period on termination as the notice is clear from the outset of the appointment.
  - To cover a period of parental leave after the birth or adoption of a child.
  - To cover a period of Long Service Leave.
  - To provide flexibility for the changing needs and strategy of a parish.
37. The use of successive fixed term contracts should be avoided. Generally, an employee is unable to challenge the expiry of a fixed term contract under unfair dismissal laws. However the totality of the employment relationship should be considered. If an employee has been engaged on successive fixed term contracts and the employer fails to renew the contract, in some cases this decision can be construed as a dismissal at the initiative of the employer.<sup>1</sup>

### *Assistant Ministers*

38. Presently, licences to the office of Assistant Minister are generally not subject to any time limit, other than for the term of the appointment. This means that Assistant Ministers remain in office unless they resign or the appointment is terminated under the *Assistant Ministers Ordinance 2017*.
39. The terms of an Assistant Minister's licence and whether it should be issued subject to a time-limit is a matter for the Archbishop to determine.

## Performance Review

40. Presently, there is no mandatory requirement for performance reviews in relation to either an Assistant Minister or a Lay Minister. The standard letter of appointment for Lay Ministers produced by SDS makes general provision for an annual review of performance.
41. Generally there are two types of performance review: an annual review of performance (that considers strategy, the fulfilment of objectives, skills development, and leadership), and ongoing review of performance in relation to day to day duties (which often occurs in the context of regular "coaching" type meetings).
42. Both MTD and CMD have developed complementary resources for performance review. The training from MTD focuses on annual reviews, whereas the CMD training provides a more comprehensive framework for the cycle of staffing.

## Transition from Deacon to Presbyter

43. The application process for ordination as a presbyter is managed by MTD on behalf of the Archbishop. MTD undertakes a discernment process which looks at whether the Assistant Minister has the convictions, character and competencies to serve as a rector, with a particular focus on leadership.
44. The process involves the following steps –
- (a) Completion of the MTD application forms, including the Lifestyle Questionnaire.
  - (b) An initial interview with the Director of MTD.
  - (c) A clearance from the Professional Standards Unit.
  - (d) An interview with the MTD Panel
  - (e) If accepted as a presbyter candidate – the Assistant Minister devises a 2-year Presbyter Ministry Development Plan with their rector. This focuses on leadership skills.

<sup>1</sup> *Saeid Khayam v Navitas English Pty Ltd* [2017] FWCFB 5162

- (f) Mid-way through the two year plan, the Assistant Minister and their rector will be required to complete evaluation forms. The Director of MTD will visit the Assistant Minister to discuss the evaluations.
- (g) At the end of the two years, the rector and three lay-leaders complete further evaluation forms. The Panel interviews the Assistant Minister and their spouse again.
- (h) The Panel makes a recommendation to the Archbishop about the Assistant Minister's suitability to be ordained as a presbyter. The Archbishop notifies the Assistant Minister of his decision.
- (i) The Assistant Minister is then eligible for appointment as a rector in a parish.

45. The Committee notes that these processes have been determined after considerable due diligence undertaken by MTD, among others, and does not consider it is equipped to review the processes.

### **Terms and Conditions for Appointment**

#### *Remuneration – stipend, allowances and benefits*

46. Parish Councils are responsible for fixing the stipend or salary and allowances and benefits of both Assistant Ministers and Lay Ministers (with the consent of the Minister).<sup>2</sup>

47. The Standing Committee issues annual "Guidelines for the Remuneration of Parish Ministry Staff". The Guidelines are recommended by the Stipends and Allowances Committee of the Standing Committee. The Subcommittee is comprised of clergy and lay people, and must include at least one wife of a member of the clergy in its membership.

48. It is not mandatory that a parish council follow these Guidelines in setting the stipend, allowances and other benefits of Assistant Ministers and Lay Ministers. However it is understood that they are generally followed by parishes.

49. The remuneration paid or provided to Assistant Ministers and Lay Ministers normally includes the following elements –

- the payment of a stipend;
- contributions to a superannuation fund;
- the provision of housing or a housing benefit, or the payment of a housing allowance;
- the provision of a fully maintained motor vehicle, or the payment of a travelling allowance; and
- the payment of a proportion of the utilities such as gas, electricity and water, telephone (including mobiles) and internet charges, hospitality expenses, professional development costs, computer and office equipment, and other expenses.

50. SDS encourages parish councils to adopt a Remuneration Policy, and has made a template available through the SDS website for this purpose.

51. The Guidelines provide for materially the same level of stipend, allowances and benefits for Assistant Ministers and Lay Ministers who have equivalent levels of experience and theological education.

52. The two main areas of difference between Assistant Ministers and Lay Ministers are in relation to long service leave and insurance.

#### *Long service Leave*

53. Assistant Ministers are entitled to long service leave under the *Long Service Leave Canon 2010*. This provides for 10 weeks leave per 10 years' service (and pro rata each 5 years thereafter). The service may be non-continuous. Lay Ministers are entitled to long service leave under the *Long Service Leave Act 1955 NSW*. This provides for 2 months (8.67 weeks) leave per 10 years' service (and pro rata each 5 years thereafter). The service must be continuous. However service with different Anglican employers in the Diocese (including parishes) is strung together for the purposes of continuity under the *Long Service Leave Ordinance 1973*.

#### *Insurance*

54. Assistant Ministers are provided with stipend continuance insurance, which is a form of income protection insurance. Parishes pay for this insurance through the Parish Cost Recovery charge. The insurance provides for benefits to be paid to parishes if an Assistant Minister is totally or partially disabled and cannot perform their duties. Since Assistant Ministers hold an office and do not work set hours, they are entitled to continue to be paid their stipend, allowances and other benefits irrespective of whether or

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<sup>2</sup> Rule 3.4(1)(b) Schedule 1 and 3.3(b) Schedule 2 of the *Parish Administration Ordinance 2008*.

not they can perform their duties. The insurance payments are therefore made to the parish. Ultimately, if an Assistant Minister cannot return to their duties and agreement is usually reached with the insurer for a lump sum payment to be made to the Assistant Minister and the appointment is terminated.

55. Lay Ministers who are unable to perform their work duties on medical grounds can utilise their accumulated personal (or sick) leave entitlement. Thereafter they would cease to have an entitlement to be paid. However Lay Ministers are covered under the NSW workers compensation scheme and have entitlements under this scheme to the extent an injury or illness arises in the course of their employment.

56. The table in Attachment 2 provides a more comprehensive comparison between the terms and conditions of Assistant Ministers and Lay Ministers.

#### *Housing*

57. The Committee is aware of instances where Assistant Ministers and Lay Ministers have been provided with inadequate housing arrangements.

58. Presently it is a requirement that the Archbishop (or Regional Bishop under delegation) approve the housing arrangements for the rector as being suitable.<sup>3</sup> There is no equivalent requirement in relation to Assistant Ministers or Lay Ministers.

59. The Committee recommends that it be a requirement that the housing arrangements for an Assistant Minister or Lay Minister be approved as suitable by the Archbishop (or Regional Bishop under delegation) if a Parish requires an Assistant Minister or Lay Minister to live in a certain location or region. This may require each Region to develop standards for the housing of Assistant Ministers and Lay Ministers so that parishes are clear about the housing they are expected to provide.

#### **Terms and Conditions for Termination**

60. The appointment of an Assistant Minister is terminable in accordance with the *Assistant Ministers Ordinance 2017*. In summary this requires that –

- the decision be made by the rector, with the concurrence of the wardens,
- at least 3 months' notice of termination be given (or longer, up to 9 months in the case of a Senior Assistant Minister),<sup>4</sup>
- the termination be due to –
  - (i) unsatisfactory conduct, performance or capacity on the part of the assistant minister, or
  - (ii) the parish council determining that the office held by the assistant minister or senior assistant minister will no longer be funded, or
  - (iii) other reasons determined by the rector having regard to the ministry needs of the parish, and
- the Assistant Minister be given particulars of the reason for the proposed termination, given a reasonable opportunity to respond and have that response taken into account before the decision is made.

61. Clause 7 of the *Assistant Ministers Ordinance 2017* provides for the Archbishop-in-Council to issue guidelines for the termination of appointments under the Ordinance. The Committee considers that Guidelines should be issued to assist rectors and wardens by giving more detail on what is expected of them to ensure that a fair and proper process is undertaken. The Committee has prepared the draft Guidelines set out in Attachment 1 for consideration by the Archbishop-in-Council for approval.

62. The Committee considers that the Guidelines should be seen as setting out minimum standards that should be followed, and supplemented by staffing training and the resources available from SDS.

63. Termination of the employment of a Lay Minister is subject to the law of employment (principally the *Fair Work Act 2009*) and the employment contract. Generally a dismissal must not be "harsh, unjust or unreasonable" (unfair dismissal), there must be for a proper reason (not discriminatory or because the employee has exercised a workplace right) and the required amount of notice must be given before the termination takes effect (or there is payment in lieu thereof). However the notice required for an Assistant Minister is considerably longer than that for a Lay Minister.

<sup>3</sup> It is a requirement for parish status under the *Parishes Ordinance 1979* and to retain nomination rights under the *Nominations Ordinance 2006*.

<sup>4</sup> The period can be less, by agreement with the Assistant Minister in writing.

*Performance Management Program*

64. An amendment was made to the *Assistant Ministers Ordinance 2017* on the floor of Synod to insert the words “where a genuine and recorded performance management program or similar has been unsuccessful in resolving the issue or issues” at the end of clause 3(3)(b)(i). The amendment confuses the grounds for issuing the termination notice with the process to be followed in reaching a decision, which, in part, is set out in other provisions within the same clause.

65. The Committee considers that the amendment should be deleted, particularly if Guidelines are issued under clause 7 of the *Assistant Ministers Ordinance 2017* which are required to be considered as part of any termination process. Training and resources are also available from SDS, MTD and CMD to assist rectors in this area.

*Communications following the termination of an Assistant Minister*

66. As identified in paragraph 13, an Assistant Minister is vulnerable to announcements or other communications concerning the termination of their appointment. Rectors may be under pressure to explain and justify the termination to the parish.

67. The Committee considers that it would be beneficial if rectors were required to consult with their Regional Bishop before making a communication to the parish about the termination of the appointment of an Assistant Minister. The Regional Bishop will be in a position to consider the proposed communication from a neutral standpoint and determine its likely impact. The Regional Bishop can also facilitate advice from the SDS Legal Counsel if they have concerns about aspects of the proposed communication.

**The resolution of disputes between Assistant Ministers and rectors**

68. Disputes are most constructively resolved when significant investment has been made upfront to build good relationships within the staff team. As Christians, we should always seek to make our love and care for each other evident, and to resolve disputes through relational means. Usually disputes are best solved by issues being raised at an early point and being dealt with as close as possible to their source.<sup>5</sup>

69. Unfortunately, broken relationships and the power imbalance between the parties mean that direct resolution is sometimes not a feasible solution.

70. The Regional Bishop may be able to assist, by acting as an informal conciliator. The Diocesan policy for dealing with allegations of unacceptable behaviour sets out a procedure for local and diocesan resolution. The Policy is intended to deal with disputes in relation to allegations of unacceptable behaviour, and not general grievances or fractured relationships. However there will usually be allegations of unacceptable behaviour in most disputes.

71. At the more extreme end, there is the possibility of making a complaint under the *Ministry Standards Ordinance 2017*. This means is only available if there is an allegation that a church worker has engaged in conduct that may call their fitness for office or ministry into question (for example, bullying, harassment or abusive behaviour). There are protections in the Ordinance to prevent complaints about, what might be described as ‘reasonable management action’. For example, the definition of ‘misconduct’ in the Ordinance expressly excludes -

“refusing to appoint, correcting, disciplining, counselling, admonishing, transferring, demoting, suspending, retrenching or dismissing a person if done –

- (A) in good faith;
- (B) reasonably; and
- (C) in the normal and lawful discharge of the duties and functions”.

72. Similarly, the definition of “bullying” in the Ordinance expressly excludes lawful conduct carried out in a reasonable manner, such as –

- disagreeing with or criticising someone’s belief or opinions or actions in an honest and respectful way;
- giving information about inappropriate behaviour in an objective way to the person or persons concerned and to any other person with a proper reason for having that information;
- setting reasonable performance goals, standards or deadlines;
- giving information about unsatisfactory performance in an honest and constructive way;
- taking legitimate disciplinary action.

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<sup>5</sup> Policy Principles, *Diocesan policy for dealing with allegations of unacceptable behaviour*.

73. The Committee does not consider that the existing dispute resolution processes can be significantly improved without making fundamental changes to put rectors under higher levels of external accountability. This issue goes to the heart of tenure and church governance, and is not within the remit of the Committee.

74. Generally, the Committee considers that the place to start is through training and providing more guidance and resources to rectors, rather than through coercive means. This is already happening through the training initiatives of CMD. This will be strengthened through implementation of the other recommendations made in this report.

For and on behalf of the Standing Committee.

BISHOP CHRIS EDWARDS  
*Chair of the Committee*

10 September 2018



## **Guidelines proposed for adoption under clause 7 of the Assistant Ministers Ordinance 2017**

*These Guidelines apply to the termination of appointments under the Assistant Ministers Ordinance 2017. Clause 3(3)(f) requires that the rector and wardens of a parish give due regard to these Guidelines before issuing a termination notice under the Ordinance.*

*These Guidelines address the termination of appointments on the basis of unsatisfactory conduct, performance or incapacity (**clause 3(3)((b)(i))**). These Guidelines do not apply in the case of serious misconduct.*

*The Ordinance also permits termination on the grounds that the position can no longer be funded or on the basis of other reasons determined by the rector having regard to the ministry needs of the parish (**clause 3(3)(b)(ii) and (iii)**). The stages set out below are not directly applicable to terminations on these grounds. However the principles of transparency and openness should be followed - in particular the Assistant Minister must be given an opportunity to understand the basis for the proposed decision, have a reasonable opportunity to provide a response and have that response taken into account before the decision is made.*

*Often termination scenarios can be avoided through well-developed practices in relation to recruitment, clarity around duties and goal setting, staff engagement, and training/development.*

*This information is a guide only and will not be an appropriate procedure to follow in all circumstances. If there is doubt, seek professional assistance.*

### **Good communication is key**

- Rectors should be openly communicating with their Assistant Ministers to provide continuous feedback and coaching. Don't delay, provide timely feedback.
- Feedback should be specific, fair and balanced. It should have the purpose of increasing the Assistant Minister's performance in their role.

### **Improvement required**

- If an Assistant Minister is demonstrating unsatisfactory conduct, underperformance or an incapacity to fulfil the duties of their office, the rector should organise a meeting with the Assistant Minister to formally put them on notice of their concerns.
- The matters should not come as a complete surprise at this stage. They should have been raised previously in an informal way during regular meetings.
- Be specific, give examples of the conduct or behaviour that needs modification. Explain how it impacts on the workplace/ministry of the parish, and why it is of concern. The Assistant Minister should not be left in any doubt about the problem and its impact. To this end, it may be helpful to put your concerns in writing to the Assistant Minister.
- At the meeting, identify the underlying reasons for the incapacity, underperformance or unsatisfactory conduct by asking questions. There may be reasons unrelated to the abilities of the Assistant Minister, for example:
  - Are the Assistant Minister's duties, goals and the required standards clear?
  - Is the expected workload reasonable?
  - Has appropriate coaching or training been provided?
  - Is the Assistant Minister experiencing any personal, health or family issues that are affecting their performance?
- Once the reasons are identified, devise a solution. This may include an improvement plan. If possible, do this together so that ownership is shared. Agree on timeframes, the resources required and the steps involved. Document the plan. Keep meeting to discuss the issues.
- Offer reasonable resources, training and coaching.
- Keep a confidential file note of the conversation.

- Note that if the Assistant Minister is experiencing personal, health or family issues, you should consider seeking professional assistance before initiating a process that may lead to termination.
- Generally, it would be inappropriate to invite the Assistant Minister to bring a support person to the first informal meeting at which concerns are raised since it escalates the seriousness of the matters too quickly. However if the Assistant Minister wishes to bring a support person, the rector should permit them to do so. The rector should consider having a support person of his own in such instance. A support person is there to be a support and witness. They are not an advocate and do not have an active role in the meeting. The rector should invite the Assistant Minister to bring a support person to the second and any subsequent meetings to discuss their conduct or performance.

### Ongoing incapacity, unsatisfactory conduct or underperformance

- If the incapacity, unsatisfactory conduct or underperformance is ongoing and the attempts to bring about improvement have been unsuccessful, the rector should brief the wardens and seek their views. It may be appropriate to involve one or more wardens at an earlier stage to act as a support person or to provide another perspective.
- If the wardens concur, notify the Assistant Minister that you are considering issuing a notice to terminate their appointment under the *Assistant Minister's Ordinance 2017*. Give the Assistant Minister a written statement containing particulars of the grounds or reasons for issuing the notice (**clause 3(3)(c)**).
- Invite the Assistant Minister to provide a written response to the statement of particulars (**clause 3(3)(d)**). Don't pre-judge the outcome. You should allow a reasonable period for a response. What is reasonable will depend on the circumstances. You should consider releasing the Assistant Minister from some or all of their responsibilities for this period of time.
- You should offer an opportunity for the Assistant Minister to meet to discuss the contents of the letter or clarify their understanding. You should invite them to bring a support person to any such meeting. At least one of the wardens should be present at the meeting in addition to the rector.
- The Assistant Minister's response must be carefully considered by the rector and the wardens in reaching a decision on whether to proceed to issue a notice to terminate the appointment (**clause 3(3)(e)**).
- The statement of particulars, the response from the Assistant Minister (if any) and any record of the rector's and wardens' consideration of the response should be provided to the Registrar (**clause 4**).

### Termination of the Appointment

- If you propose to issue a notice of termination, you must first notify the Regional Bishop (**clause 3(3)**).
- If a decision is made to terminate the appointment, this decision must be made by the rector with the concurrence of the wardens of the principal or only church of the parish (**clause 3(1)(b)**).
- A notice should be issued to the Assistant Minister confirming the decision and stating the period of notice that is given, which must not be less than 3 months after the date of the notice (or longer in the case of a Senior Assistant Minister – see clause 3(2)(b)(ii)). An Assistant Minister can agree to a lesser period of notice in writing (**clause 3(3)(2A)**).

### Finishing Well

- Generally an Assistant Minister should be farewelled in a positive way, publicly thanked for their service and prayed for. However there may be circumstances where this is not possible or appropriate or due to the previous conduct of the Assistant Minister.
- Any announcement about the termination should be factual in nature and not express negative opinions. The Regional Bishop should be consulted and consideration should be given to seeking legal advice.
- The rector and wardens should provide reasonable assistance to help the Assistant Minister to transition from their role in the parish.

## Comparison of terms and conditions between clergy (as officeholders) and lay ministers (as employees)

|  | Assistant Minister (clergy)   | SLW (lay)   |
|--|---|---|
| <b>Probationary periods</b>  | Not applicable  | Qualifying period for unfair dismissal: (Fair Work Act s 383) <ul style="list-style-type: none"> <li>• 12 mths - parish with less than 15 employees</li> <li>• 6 mths – parish with more than 15 employees.</li> </ul> Probationary periods are strictly no longer necessary post the FWA, but they can be helpful in establishing expectations. Probationary period would be set out in Letter of Appointment.   |
| <b>Use of fixed term contracts</b>                                 | Licensing is the prerogative of the Archbishop and is usually for the term of the appointment.<br><br>Appointments are terminable in accordance with the <i>Assistant Ministers Ordinance 2017</i> .  | Fixed term option available.  |
| <b>Performance review</b>  | No requirement.<br>MTD and CMD have recently developed training and resources.  | The standard letter of appointment provides for an annual review of performance.<br><br>The MTD and CMD training and resources are equally applicable to Lay Ministers.   |
| <b>Mechanism for transition from being a Deacon to a Presbyter</b> | Any male deacon with a minimum of 12 months experience in pastoral ministry can apply via MTD to be a candidate for ordination as a presbyter.  | Not applicable.   |
| <b>Terms and conditions for appointment</b>                        | <i>Work Hours</i><br>Not applicable. Clergy hold an office and do not have set work hours.<br><br><i>Remuneration</i><br>Annual Standing Committee <i>Guidelines for the Remuneration of Parish Ministry Staff</i> . Rates are generally equivalent with Lay Ministers.<br><br>The Parish Council is responsible for fixing the stipend or salary and allowances and benefits of both clergy and lay ministers (with the consent of the minister): see rule 3.4(1)(b) Schedule 1 and 3.3(b) Schedule 2 of the <i>Parish Administration Ordinance 2008</i> . | <i>Work Hours</i><br>Maximum 38 hour week (avg), plus reasonable additional hours. (FWA s 62(1), also stated in Letter of Appointment)<br><br><i>Remuneration</i><br>Annual Standing Committee <i>Guidelines for the Remuneration of Parish Ministry Staff</i> . Rates are generally equivalent with AMs.<br><br>The Parish Council is responsible for fixing the stipend or salary and allowances and benefits of both clergy and lay ministers (with the consent of the minister): see rule 3.4(1)(b) Schedule 1 and 3.3(b) Schedule 2 of the <i>Parish Administration Ordinance 2008</i> . |

|                    | Assistant Minister (clergy)  | SLW (lay)   |
|--------------------|--|---|
|                    | <p><i>Leave</i></p> <p>Leave is strictly not a relevant concept for office holders.</p> <p>Annual leave: Provision is made by the <i>Annual Leave Ordinance 1983</i> as a protection against allegations of neglect of duty. The entitlement is:<br/>4 weeks per year, plus additional leave if approved by wardens. Generally to be taken within 2 years of accrual.</p> <p>LSL: As per <i>Long Service Leave Canon 2010</i>. 10 weeks per 10 years' service (and pro rata each 5 years thereafter). Service may be non-continuous.</p> <p>Parental Leave: the <i>Parental Leave Ordinance 2016</i> sets out a model policy for adoption by parishes. The policy is not mandatory and can be amended if it is adopted. It provides for 52 weeks unpaid leave of women and up to 2 weeks paid leave for men.</p> <p>Generally will be eligible for up to 18 weeks concurrent Parental Leave Pay at the National Minimum Wage through Centrelink.</p> <p><i>Accommodation</i></p> <p>Residence or housing allowance provided.</p> <p>If full-time member of ministry staff is not provided with a residence, parish should provide an accommodation benefit (as agreed between staff member and parish council): <i>Guidelines for the Remuneration of Parish Ministry Staff for 2018</i> (guideline 8.2)</p> | <p><i>Leave</i></p> <p>Annual leave: 4 weeks. (FWA s 87)<br/>Accumulates.</p> <p>LSL: 2 months (8.67 weeks) every 10 years (and pro rata each 5 years thereafter). Must be continuous. Service with Anglican employers in the diocese is included for the purposes of continuity. (<i>Long Service Leave Act 1955</i> (NSW))</p> <p>Parental leave: 12 mths unpaid (potential for a further 12 mths). (FWA s 70, 76).</p> <p>Personal carers leave: 10 days paid leave per annum.</p> <p>Generally will be eligible for up to 18 weeks concurrent Parental Leave Pay at the National Minimum Wage through Centrelink.</p> <p><i>Accommodation</i></p> <p>Residence or housing allowance provided.</p> <p>If full-time member of ministry staff is not provided with a residence, parish should provide an accommodation benefit (as agreed between staff member and parish council): <i>Guidelines for the Remuneration of Parish Ministry Staff for 2018</i> (guideline 8.2)</p> |
| <b>Termination</b> | <p>Protections – permitted grounds and required process is set out in clause 3(3) of the <i>Assistant Ministers Ordinance 2017</i>.</p> <p>Notice – 3 mths minimum (or longer for a Senior AM, can be up to 9 mths or as agreed) (clause 3(2)(b) of the <i>Assistant Ministers Ordinance 2017</i>)</p> <p>Termination procedures required by the <i>Assistant Ministers Ordinance 2017</i> in termination procedures (clause 3).</p>   | <p>Protections – unfair dismissal, discrimination (subject to exemptions), general protections, breach of contract.</p> <p>Notice of termination or payment in lieu (for permanent position) – 1 week to 5 weeks depending on years of service and age (FWA s 117). May be longer if so provided in contract.</p> <p>Employment can be terminated summarily by ministers and wardens in a permanent or fixed term position for serious misconduct. Notice to be given. (Letter of Appointment)</p> <p>FWA s 387 – indicates steps that should be taken to ensure procedural fairness (e.g., notifying person of valid reason for dismissal, providing opportunity to respond).</p>  |

|  | Assistant Minister (clergy)   | SLW (lay)  |
|--|---|--|
| <b>Dispute resolution</b>  | Limited. The <i>Diocesan policy for dealing with allegations of unacceptable behaviour</i> and/or the <i>Ministry Standards Ordinance 2017</i> may be relevant in some situations.<br><br>Work, health and safety laws relevant if dispute is giving rise to stress and mental health concerns and the parish is a “workplace” for the purposes of the Act. | Limited. The <i>Diocesan policy for dealing with allegations of unacceptable behaviour</i> and/or the <i>Ministry Standards Ordinance 2017</i> may be relevant in some situations.<br><br>Work, health and safety laws relevant if dispute is giving rise to stress and mental health concerns.<br><br>No explicit provision in letter of appointment, but implied duty of mutual trust and confidence would require efforts to be made at dispute resolution.   |
| <b>Others</b>  |   |  |
| <b>Position Description</b>  | Determined by the rector.<br><br>Duties of assisting rector can be set out in the Letter of Welcome for AM  | Lay minister: Determined by rector. (see Note under rule 3.13A Schedule 1 and 3.12A Schedule 2 of the <i>Parish Administration Ordinance 2008</i> – minister retains control of the lay minister’s duties).<br><br>Main duties of the position listed in the Letter of Appointment   |
| <b>Insurance</b>   | Stipend Continuance – a form of income protection insurance.<br><br>Sickness and Accident Fund – covers some medical costs and the cost of a locum for the parish.  | Workers compensation insurance.  |
| <b>Remedies for Employee/ Officeholder for Employer breach of Terms and Conditions</b> | <i>Diocesan policy for dealing with allegations of unacceptable behaviour</i><br><br>Non-binding, discretionary facilitation of the dispute.<br><br>Direct resolution; local resolution; diocesan resolution  | <i>Diocesan policy for dealing with allegations of unacceptable behaviour</i><br><br>Non-binding, discretionary facilitation of the dispute.<br><br>Direct resolution; local resolution; diocesan resolution<br><br>Redress for breach of contract with a breach of FWA:<br><ol style="list-style-type: none"> <li>1. Fair Work Commission</li> <li>2. Federal Circuit Court</li> <li>3. Federal Court</li> </ol> Orders available:<br><ol style="list-style-type: none"> <li>1. Compensation.</li> <li>2. Reinstatement.</li> <li>3. Penalties.</li> <li>4. Injunctions – orders which require the employer to do or stop doing certain conduct.</li> </ol> Redress for breach of contract in absence of FWA breach (such as underpayment of wages).<br><ol style="list-style-type: none"> <li>1. Local Court – up to \$100,000; or</li> <li>2. District Court</li> </ol> |