

# Church Discipline Ordinance 1996

## Explanatory Statement

### Introduction

1. The bill for the Church Discipline Ordinance 1996 provides a means for investigating and making determinations about whether licensed ministers and other persons who hold a "position" (as defined in clause 2 of the bill) in the Diocese have engaged in "unacceptable behaviour".
2. The term "unacceptable behaviour" is central to the bill and is defined to mean -
  - (a) in the case of an ordained person - sexual conduct after ordination which would be regarded by right thinking members of the Church as disgraceful and inconsistent with the standards to be observed by a Christian minister;
  - (b) in the case a person who is not ordained - sexual conduct while holding a position which would be regarded by right thinking members of the Church as disgraceful and inconsistent with the standards which should be observed by a Christian lay person holding such a position; and
  - (c) any threat, intimidation or inducement made by or at the direction or with the consent of a person intended to dissuade another person from making a complaint to the Archbishop about unacceptable behaviour of the type referred to in paragraphs (a) or (b) of this definition by the first mentioned person.
3. The bill proposes a 4 stage process for dealing with unacceptable behaviour by a Subject -
  - (a) A person appointed by the Archbishop to investigate the Allegations;
  - (b) Experienced Lawyer to report on Allegations;
  - (c) Tribunal to investigate and make recommendations;
  - (d) Archbishop to act on recommendations.
4. A flow chart which sets out the procedure proposed by the bill is attached.

### A Person Appointed by the Archbishop to Investigate Allegations

5. If the Archbishop -
  - (a) receives a complaint that a person, being licenced minister or lay person who holds a Position, (the "Subject"), has engaged in unacceptable behaviour; or
  - (b) knows or reasonably suspects that a Subject has engaged in unacceptable behaviour which, if substantiated before a tribunal appointed under the bill, would be likely to result in the tribunal making a recommendation that the licence of the person be revoked or that a Prohibition (see item 11) be issued against the person,

the Archbishop must promptly appoint a person or persons to investigate the allegations unless any of the circumstances set out in clause 3(3) of the bill applies. One of those circumstances is if each person who has been the subject of the unacceptable behaviour has requested that the Archbishop not investigate the matter.

### Experienced Lawyer to Report on Allegations

6. After an investigation has been completed, clause 4 of the Bill requires the Archbishop appoint an "experienced lawyer" (as defined in clause 2 of the bill) to report to the Archbishop about -
  - (a) whether there is prima facie evidence of the Subject having engaged in unacceptable behaviour or having committed an offence or offences under the Tribunal Ordinance 1962; and
  - (b) if so, whether having regard to all the evidence, it is likely that a tribunal appointed under the bill would find that the Subject engaged in unacceptable behaviour or that the Diocesan Tribunal constituted under the Tribunal Ordinance 1962 would find the Subject guilty of an offence or offences.

7. If the experienced lawyer thinks that prima facie evidence of unacceptable behaviour exists and that it is likely, on the evidence, that a tribunal appointed under the bill would find that the Subject engaged in unacceptable behaviour then, under clause 5 of the bill, the Archbishop must appoint a tribunal to consider the matter. If the experienced lawyer thinks that there is prima facie evidence that an offence under the Tribunal Ordinance 1962 has been committed and that, having regard to all the evidence, it is likely that the Diocesan Tribunal would find the offence proved, the Archbishop must promote a charge under the Tribunal Ordinance. If the experienced lawyer thinks there is prima facie

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evidence of both unacceptable behaviour and an offence and, having regard to all the evidence, it is likely that a tribunal would find that unacceptable behaviour occurred or that the Diocesan Tribunal would find the minister guilty of an offence or offences, the Archbishop must either proceed under the bill or the Tribunal Ordinance.

8. If the experienced lawyer finds otherwise, the Archbishop may still proceed under the bill or under the Tribunal Ordinance.

### **Tribunal to Investigate and Make Recommendations**

9. The tribunal comprises 3 persons appointed by the Archbishop and must include an experienced lawyer (who would not be the experienced lawyer who reviewed the matter previously) and a person who is or has been a licensed minister for a term or terms of at least 10 years.

10. The tribunal must investigate the allegations referred to it and all other allegations which come to its attention in the course of that investigation. If the tribunal determines that the Subject has engaged in unacceptable behaviour it must recommend to the Archbishop one or more of the following -

- (a) that no further action be taken in relation to the allegations;
- (b) that, in the case of a licensed minister, the licence of that person be revoked and whether a Prohibition should be issued;
- (c) that, in the case of an other person, a Prohibition be issued.

11. A Prohibition is an order prohibiting a person from holding another "position" in the Diocese. A Prohibition may be general or limited to specific positions and may be for a limited or indefinite term.

### **Archbishop to act on Recommendations**

12. If the tribunal recommends to the Archbishop that the licence of the licensed minister be revoked the Archbishop must invite the person to show cause why the license should not be revoked and thereafter may revoke the licence. Similarly, if the tribunal recommends that a Prohibition be issued (either against the licensed minister or a lay person) the Archbishop must give the Subject the opportunity to show cause and may, thereafter, impose a prohibition. The Prohibition may not be for a term which is longer than that recommended by the tribunal and must include any limitations recommended by the tribunal.

13. If a Prohibition is issued the Subject immediately vacates all positions then held by the Subject and is ineligible to be elected or appointed to any position which the Prohibition prohibits that person from holding.

### **Suspension**

14. The bill proposes giving the Archbishop power to suspend a licensed minister with the concurrence of the Standing Committee in 2 circumstances. The first circumstance is where the licensed minister has been charged with a criminal offence and, in the Archbishop's opinion, the allegations giving rise to the offence are sufficient to constitute allegations of unacceptable behaviour.

15. The second circumstance is where the Archbishop is required under clause 5 of the bill to appoint a tribunal to investigate an allegation of unacceptable behaviour. This occurs if the experienced lawyer appointed under clause 4 of the bill finds there is prima facie evidence that the minister has engaged in unacceptable behaviour and that a tribunal appointed under the bill would be likely to make a finding to that effect.

### **Recommendation**

16. The Standing Committee recommends that the Synod pass the bill as an ordinance.

For and on behalf of the Standing Committee

MARK PAYNE  
**Legal Officer**

2 October 1996