

Deaconesses, Readers and Other Lay Persons Ordinance 1981 Amendment Ordinance 1994

Explanatory Statement

Introduction

1. The Commonwealth Parliament has recently amended the Industrial Relations Act 1988 (the "Act") to regulate the termination of the employment of most employees.

Purpose of the Bill

2. The purpose of this Bill is to amend the Deaconesses, Readers and Other Lay Persons Ordinance 1981 ("1981 Ordinance") as a consequence of the amendments referred to in 1. The 1981 Ordinance is set out on pages 252 to 257 of The 6th Handbook.

Industrial Relations Act 1988

3. Lay ministers are often employed to work in parishes and diocesan organisations. For those lay ministers who work in a parish, it is generally taken to be the case that the churchwardens are the employers of those lay ministers (see item 10.3 of The 6th Handbook).

4. There are 4 relevant requirements of the amendments to the Act -

(a) employment may only be terminated if there is a valid reason connected with the employee's capacity or conduct or the operational requirements of the employer;

(b) employment may not be terminated on prohibited grounds such as marital status, age, family responsibilities, pregnancy or political opinions which are unrelated to the inherent requirements of the position;

(c) an employee must be given not less than the prescribed period of notice of termination of employment (the Act specifies up to 6 weeks notice is required); and

(d) an employee must be given the opportunity to respond to allegations about misconduct or poor performance.

5. The Act does not apply to fixed term employment contracts or to the employment of certain casual employees.

6. If employment is terminated in circumstances which contravene the Act, the court can, on the application of the employee, order reinstatement or where reinstatement is not practical, award compensation in lieu.

7. A circular is to be sent to ministers and churchwardens advising of the amendments and giving guidance on the application of those amendments.

Review of the 1981 Ordinance

8. Subclause 16(1) of the 1981 Ordinance contemplates that, subject to the terms of the Archbishop's authority, a lay minister will receive at least 3 month's notice of termination of employment or payment in lieu. While the notice period is greater than that required under the Act, clause 16(1) suggests that the employment of a lay minister can be terminated -

(a) for reasons other than the lay minister's capacity, conduct or the operational requirements of the employer; or

(b) on the basis of prohibited grounds which are not related to the inherent requirements of the position; or

(c) for reasons of alleged misconduct or incapacity where the lay minister has not had an opportunity to respond.

9. If, under clause 16(1) of the 1981 Ordinance, an employer terminated a contract of employment to which the Act applies for a reason or in the circumstances set out in paragraphs (a), (b) or (c) of item 8, the termination will be contrary to the provisions of Act. Suggested new paragraph (d) to subclause 16(1) makes it clear that the termination of the employment of a lay minister is subject to any provision of the Act which applies to the employment of that person.

10. Subclause 16(3) of the 1981 Ordinance contemplates that when a new minister is appointed to a parochial unit the employment of a lay minister in that parochial unit is terminated within 90 days unless certain action occurs. A termination under clause 16(3) could be challenged on one of the grounds specified paragraph (a), (b) or (c) of item 8. Accordingly, the Bill proposes that subclause 16(3) be repealed. This will mean that a lay minister will have security of employment when a new minister is appointed to a parochial unit unless the capacity or conduct of that person is in question or the operation requirements of the parochial unit change.

Recommendation

11. The Standing Committee recommends that the Synod pass the Bill as an ordinance.

For and on behalf of the Standing Committee

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