

Discipline Amendment Ordinance 2009

No 27, 2009

Long Title

An ordinance to amend the Discipline Ordinance 2006.

The Synod of the Diocese of Sydney Ordains as follows.

1. Name of Ordinance

This Ordinance is the Discipline Amendment Ordinance 2009.

2. Amendments

The Discipline Ordinance 2006 is amended as follows –

- (a) insert a new clause 30(1)(c) as follows (with consequential relettering of existing clause 30(1)(c)) –
“(c) upon the PSC making a recommendation to the Church authority under clause 37A, or”
- (b) insert a new clause 34(1)(ha) as follows –
“(ha) 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,”
- (c) delete clause 34(1)(i) and insert instead the following –
“(i) 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,” and
- (d) delete clause 34(1)(j) and insert instead the following –
“(j) if –
 - (i) the person is subject to the jurisdiction of the Disciplinary Tribunal,
 - (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, 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,” and
- (e) insert after clause 35(1) a new clause 35(1A) as follows –
“(1A) In respect of a recommendation made by the PSC under clause 34(1)(i) or (j), the notice must include a statement that proceedings will be taken against the person in accordance with clause 37.” and
- (f) in clause 35(2) –
 - (i) delete the word “The” and insert instead the matter “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”, and
 - (ii) insert the words “and comply with the recommendation to the satisfaction of the Director” after the second occurrence of the word “notice”, and
- (g) insert the words “and compliance with” after the words “acceptance of” in clause 35(3), and
- (h) in clause 36(3)(b) insert after the first occurrence of the words “Disciplinary Tribunal” the following –
“because of an office, role, appointment or position for which they are paid”, and
- (i) delete the matter “.” at the end of clause 36(3)(b) and insert instead the following –
“, or

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- (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.”, and
- (j) in clause 36(4)(b) insert after the first occurrence of the words “Disciplinary Tribunal” the following –
“because of an office, role, appointment or position for which they are paid”, and
- (k) delete the matter “.” at the end of clause 36(4)(b) and insert instead the following –
“, 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.”, and
- (l) insert a new clause 36(5) as follows –
“(5) 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.”, and
- (m) insert a new clause 37A as follows –
“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) 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).”, and
- (n) insert a new Part 5 in Chapter 2 as follows –
“Part 5 Costs of responding to a complaint
37B. Reimbursement of costs
 - (1) A person 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 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.”, and
- (o) insert the words “Archbishop or other” before each occurrence of the words “relevant church authority” in clauses 66 and 67, and
- (p) delete the matter “the relevant church authority (if any)” in clause 68(2) and insert instead the words “any other relevant church authority”, and
- (q) delete both references to the number “3” in clause 115(1) and insert instead the number “5”, and
- (r) delete the words “one experienced lawyer and at least one man and one woman” in clause 115(2) and insert instead the following –
“two experienced lawyers and at least two men and two women”.

3. Transitional provisions

- (1) The scale of costs for reimbursement of a respondent’s costs prior to appearances before the Diocesan or Disciplinary Tribunal approved by the Standing Committee at its meeting on 28 April 2008 is taken to be the scale of

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costs approved for the time being by the Standing Committee for the purposes of clause 37B(2) of the Discipline Ordinance 2006.

(2) As soon as practicable after the commencement of this Ordinance, the Standing Committee is to elect two members of the clergy and two lay persons to be members of the Diocesan Tribunal to fill the vacancies created by clause 2(q) of this Ordinance. Subject to clause 117 of the Discipline Ordinance 2006, the persons elected by the Standing Committee hold office until the first session of the 49th Synod.

I Certify that the Ordinance as printed is in accordance with the Ordinance as reported.

PG KELL
Chairman of Committees

We Certify that this Ordinance was passed by the Synod of the Diocese of Sydney on 21 October 2009.

CJ MORONEY
R WICKS
Secretaries of Synod

I Assent to this Ordinance.

PETER F JENSEN
Archbishop of Sydney
26/10/2009