

## Discipline Ordinance 2006 Amendment Ordinance 2013

### Explanatory Report

#### **Amendments in relation to the functions of the Director and the Professional Standards Committee**

1. Under clause 34 the focus of the Professional Standards Committee ("PSC") is to make recommendations to a person against whom the complaint is made about the action he or she should take to avoid further disciplinary steps being taken against them under the Ordinance.
2. It is proposed to delete existing clauses 34(1)(d) (admonishment); (g) (imposing conditions or restrictions) and (h) (termination).
3. It is unclear what consequences flow from admonishment or, indeed, who does the admonishing. It is not considered necessary to regulate admonishment by Ordinance. It is also not a matter that is within the control of the person since it relies on another party to do the admonishing.
4. It is proposed to insert a new clause (to be numbered as (f) in a renumbered clause 34(1)) to provide for a recommendation that the person resign from a specified office, position or employment; not accept nomination or appointment to a specified office or position in the Diocese; or not exercise any specified functions or meet specified restrictions or conditions in relation to any office, position or employment in the Diocese. This will be backed up by a new clause 36(4A) which will create an offence for failing to honour an undertaking to the Director in or substantially in the terms of a recommendation made under clause 34(1)(f). A breach of clause 36(4A) may itself be the subject of a complaint.
5. It is not within the person's own control to comply with a recommendation that their employment or ministry be terminated. Problems may also arise where the church authority considers it is not able to terminate the person's ministry or employment for legal or other reasons. The better course is for the PSC to make a recommendation that the person resign since the person can choose whether or not to do so, and therefore whether the process stops there or proceeds to a tribunal.
6. Currently under clause 35(1) the PSC must give notice of its recommendations to the complainant, the person against whom the complaint is made, the Director, and the Archbishop. In some cases the Archbishop is not a church authority in relation to the person against whom the complaint has been made or is not the only church authority. It may be a rector and wardens for example. It is proposed to expand the list of persons who are to receive notice of the recommendations to include a relevant church authority.
7. Currently a person against whom a complaint is made and who receives a recommendation of the PSC has 14 days in which to respond. This may not be long enough, and the proposed amendments to clauses 35(2) and 36 give the Director the ability to extend the period to longer than 14 days in certain circumstances.
8. Currently under clause 36(1) the Director is prohibited from taking further action against the person if the person accepts and complies with the recommendation to the satisfaction of the Director. It is proposed to expand these requirements to include continued compliance 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. Arguably such a requirement is already captured by the need for compliance to be to the satisfaction of the Director but it is desirable to put the matter beyond doubt. There is a parallel change to clause 36(3).
9. It is proposed to amend clause 37A to give the PSC the express ability to recommend to a church authority that an unpaid lay person be removed from a specified position or office. A corresponding amendment is proposed for clause 66 in respect of recommendations made by the Disciplinary Tribunal.

#### **Other amendments**

10. Clause 4 of the Bill makes several miscellaneous minor amendments updating reference to child protection and other legislation in the Ordinance and the notes which describe the effect of this legislation.
11. It is also proposed to amend clauses 16(1) and (2) to reflect the fact that the Director may refer a complaint to the PSC under clause 19 as well as under clause 32.

#### **Recommendation**

12. The Standing Committee recommends that the Synod pass the bill as an Ordinance.

For and on behalf of the Standing Committee.