

Miscellaneous Amendments Ordinance 1997

Explanatory Statement

Introduction

1. The purpose of this bill is to carry out certain law reforms.

Amendment of the Deaconesses, Readers and Other Lay Persons Ordinance 1981

2. Clause 16 of the Deaconesses, Readers and Other Lay Persons Ordinance 1981 (see page 266 of the 7th Handbook) sets out certain terms which apply to the office or employment of a deaconess or lay person holding an authority issued under the Deaconesses, Readers and Other Lay Persons Ordinance 1981. Clause 16(1)(d) (inserted into the ordinance in 1994) provides, in effect, that a deaconess or lay person is employed subject to the relevant provisions of Part VIA of the Commonwealth Industrial Relations Act 1988.

3. Formerly, Part VIA of the Industrial Relations Act 1988 set out rules of general application regarding unfair dismissal and unlawful termination of employment. However, following changes to Commonwealth legislation in 1996 the rules concerning unfair dismissal found in State legislation would now usually apply to an employed deaconess or lay person. Commonwealth legislation continues to apply to unlawful termination.

4. It is difficult to adequately reference applicable Commonwealth and State legislation in an ordinance and it is unnecessary to try to do so because that legislation will apply regardless of the terms of a Synod ordinance. Accordingly it is proposed to omit clause 16(1)(d). A circular has been sent recently to ministers and churchwardens reminding them of the terms of the relevant State and Commonwealth legislation.

Amendment to the Standing Orders Ordinance 1968

5. By the first sentence of clause 53(2) of the Schedule to the Standing Orders Ordinance 1968 (see page 325 of the 7th Handbook) the Synod may refer an ordinance (at any stage) until the next session of that Synod or defer any ordinance to the next Synod. The second sentence of clause 53(2) contains a "recommittal provision". It provides that where the Archbishop has withheld his assent to any ordinance or the Synod has referred any ordinance after the ordinance has been considered by a Committee of the Whole Synod, the ordinance may on motion or a clause or clauses referred to in the motion may be reconsidered by a Committee of the Whole Synod at the next session of that Synod or at the next Synod, as the case may be.

6. It has been suggested that the "recommittal provision" in the second sentence of clause 53(2) does not apply to bills which have been deferred (as opposed to bills which have been referred) because the sentence does not expressly refer to bills which have been deferred. While legal advice does not support this suggestion, it is proposed to amend clause 53(2) to make it clear that the recommittal provision also applies to deferred bills.

Amendment of the Synod Membership Ordinance 1995

7. The Synod Membership Ordinance 1995 (printed on pages 591 to 606 inclusive of the 1996 Year Book) requires that a person must be a "Qualified Person" to be elected as a parochial representative. A "Qualified Person" is a lay person who -

- (a) is 18 years of age or older; and
- (b) is a communicant member of the Anglican Church of Australia.

8. The Synod Membership Ordinance 1995 does not expressly say that a person ceases to be a parochial representative if the person ceases to be a "Qualified Person". Thus a person elected as a parish representative could continue to be a member of the Synod notwithstanding that the person has been ordained or has ceased to be a communicant member of the Anglican Church of Australia.

9. It is proposed to amend the Synod Membership Ordinance 1995 to expressly provide that a person retires as a parochial representative if the person ceases to be a Qualified Person.

Filling of Casual Vacancies among members of the Standing Committee elected by the Synod

10. Following amendments to the Standing Committee Ordinance 1897 in 1995, the Standing Committee now comprises -

- (a) the Archbishop, the Regional Bishops, the Chancellor, the Registrar, the Dean and the Diocesan Secretary, ex officio;

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- (b) 4 Qualified Ministers elected by the members of Synod;
- (c) 8 Qualified Laypersons elected by the members of Synod;
- (d) 2 Qualified Ministers from each Region elected by the Regional Electors of that Region;
- (e) 4 Qualified Laypersons from each Regional elected by the Regional Electors of that Region;
and
- (f) the Archdeacons with or without territorial jurisdiction.

11. The election for the members of the Standing Committee elected by the members of the Synod (being the members referred to in 10(b) and 10(c) above) was conducted by postal ballot held before the 1st session of the 44th Synod. The election of the members of the Standing Committee referred to in 10(d) and 10(e) above took place at that session.

12. The provisions for the postal ballot were experimental and ceased to have effect on the last day of the 1st session of the 44th Synod.

13. Under the Standing Committee Ordinance 1897, as amended, a casual vacancy among the members of the Standing Committee elected by the Synod may be filled by the Synod. When the Synod is not in session the casual vacancy may be filled by the Standing Committee. However the term of office of a person elected by the Standing Committee to fill the casual vacancy expires on the 1st day of the next session of the Synod. This enables the Synod to fill the vacancy.

14. As the provisions for the postal ballot have ceased to have effect, provision must be made for how the Synod is to fill casual vacancies among members of the Standing Committee elected by it. The Standing Committee recommends that at the Synod sessions in 1997 and 1998, any such casual vacancies be filled by the Synod as a normal election conducted at that session, rather than by way of postal ballot.

15. It is proposed to expressly provide that the procedure to be adopted by the Synod for filling such casual vacancies is the usual procedure for Synod elections.

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

20 August 1997