

Parish Disputes Ordinance 1999

Explanatory Statement

Note: The Synod is part way through considering the bill for the Parish Disputes Ordinance 1999. The form of the Parish Disputes Ordinance 1999 which is printed for Synod members, incorporates the amendments which have been agreed to date in committee, and the Explanatory Statement has been revised accordingly.

Introduction

1. The Parish Disputes Ordinance 1999 legislates for the introduction of a disputes resolution procedure between a minister and his parish.
2. The objective of the procedure is to resolve disputes in a manner which provides for continuity of gospel ministry, restores relationships and achieves reconciliation.
3. If resolution of a dispute is not achieved through these procedures, the formal procedures provided by existing ordinances such as the Tribunals Ordinance 1962 and the Incapacity and Inefficiency Ordinance 1906 would remain available.

Background

Pre-1998 Session of Synod

4. In October 1994 the Synod resolved as follows -
“Synod hereby appoints a Select Committee under Standing Order 15 -
 - (a) to review the administration of the Tribunal Ordinance 1962 and the Incapacity and Inefficiency Ordinance 1906;
 - (b) to take over the functions of the committee appointed by the Standing Committee to review parish disputes procedures;
 - (c) to prepare draft ordinances to put into effect any recommendations arising out of enquiries, and to report to the 1996 Session of Synod.”
5. On 26 June 1995 Standing Committee granted leave for the Select Committee to report to the 1997 Synod.
6. In October 1997 the Synod received the Select Committee's report. Bills for a number of ordinances including the Parish Disputes Ordinance incorporating the Select Committee's recommendations were introduced and passed the 1st and 2nd reading stages. Prior to the commencement of the committee stage, Synod resolved to defer consideration of the bill to the 3rd

session of the 44th Synod in view of the large number of amendments proposed for the bill.

1998 Session of Synod

7. On 13 October 1998 the Synod appointed a Select Committee under Standing Order 44(9) comprising the mover and seconder of the bill and the deputy chairman of committees to discuss the principles involved in amendments proposed for the bill. The committee reported to the Synod on 14 October 1998. In its report the committee identified certain amendments that the promoters of the bill were prepared to accept and formulated 6 questions of principle arising from other amendments proposed for the bill. Synod subsequently passed certain amendments accepted by the promoters of the bill. Synod also determined the questions of principle formulated by the committee as follows -

- (a) that the clerical membership of the Synod Pool should consist of at least 9 incumbents;
- (b) that the regional bishop should not be a member of the Reconciliation Panel;
- (c) if 12 or more laypersons notify the dispute, they should have carriage of the matter;
- (d) the Reconciliation Panel should have a discretionary power to direct a stay;
- (e) the number of laypersons in a parish who may report a dispute should remain at 12;
- (f) there should be a separate Arbitration Panel (subsequently known as an Advisory Panel). The membership of the Panel should not include the regional bishop or an Archbishop-in-Council appointment.

8. On 20 October 1998 the Synod passed further amendments to the bill including amendments reflecting the principles determined by the Synod on 14 October. Due to the lack of time, the committee stage was adjourned until the 1st session of the 45th Synod.

9. The form of the bill currently before Synod incorporates the various amendments passed at the 1998 session of the Synod.

Summary of Dispute Resolution Procedure

Purpose and Approach

10. The schedule to the bill provides a procedure for resolving disputes between a minister and laypersons (clause 2). "Laypersons" is defined to mean -

- (a) the majority of the members of a parish council who have notified a regional bishop of a dispute or;
- (b) 12 or more parishioners who have notified a regional bishop of a dispute; or

- (c) both (a) and (b) if both have notified the regional bishop of the same dispute (clause 1(1)).

11. Clause 4 contemplates 3 levels of extra parochial dispute management, namely -

- (a) notification to and consultation with the regional bishop;
- (b) the Reconciliation Panel; and
- (c) the Advisory Panel.

Notification and Consultation

12. If internal parish procedures do not resolve a dispute then the regional bishop may be consulted as regards the dispute (clause 5). A dispute may be notified to the regional bishop by the minister or laypersons (clause 6(1)). The regional bishop is required to acknowledge the dispute in writing normally within 2 weeks (clause 6(5)).

13. Having met with the parties, the regional bishop must at his absolute discretion determine what action should be taken including whether the matter should be referred to a Reconciliation Panel (clause 7(1)). In making such determination the regional bishop may have regard to certain specified matters (clause 7(2)).

Reconciliation Panel

14. The reconciliation panel is called by a regional bishop (clause 8). A Reconciliation Panel will generally consist of 2 persons being -

- (a) 1 person from the Synod Pool nominated by the laypersons; and
- (b) 1 member of the clergy from the Synod Pool nominated by the minister (clause 9(1)).

15. The Synod Pool is a group of 12 clergy, at least of 9 of whom are to be incumbents (elected by the clerical members of Synod) and 12 laypersons (elected by the lay members of Synod) (clause 1(1)).

16. Meetings between the Reconciliation Panel and each of the parties to the dispute are to be confidential and conducted in the manner set out in clause 13. This includes being free of legal representation. The Reconciliation Panel may reach a range of conclusions -

- (a) the parties may agree to undertake or not undertake specific actions and review the position at some time in the future;
- (b) the parties may not agree, but accept that complete agreement is not necessary;
- (c) the dispute may be fully resolved to everyone's satisfaction;

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- (d) there may be no resolution achievable under this process (clause 14).
17. A Reconciliation Panel remains convened until -
- (a) the Reconciliation Panel advises the regional bishop that the parties have reconciled and the dispute is resolved;
 - (b) the Reconciliation Panel advises the regional bishop that the reconciliation process is unlikely to produce an outcome acceptable to all parties;
 - (c) either party calls for an Advisory Panel;
 - (d) either party indicates to the regional bishop that the reconciliation process has failed; or
 - (e) the dispute becomes the subject of litigation between the parties (clause 16).

Advisory Panel

18. An Advisory Panel may be called by the regional bishop if a dispute continues to exist but only -
- (a) after the Reconciliation Panel has reached a conclusion; or
 - (b) if the regional bishop is satisfied that a Reconciliation Panel has made a serious attempt to resolve the dispute (clause 17(1)).
19. An Advisory Panel consists of 3 persons being -
- (a) 1 person from the Synod Pool nominated by the regional bishop;
 - (b) 1 layperson from the Synod Pool nominated by the laypersons; and
 - (c) 1 member of the clergy from the Synod Pool nominated by the minister (clause 18(1)).
20. Clause 22 provides for the way in which meetings of the Advisory Panel will be conducted. This includes being free of legal representation.
21. Clause 23 provides that the Advisory Panel may recommend any or all of the following outcomes -
- (a) a set of actions either with a view to finally resolving the dispute or as interim measures to be assessed after a period specified by the Panel;
 - (b) that the minister takes certain actions;
 - (c) that certain members of the parish council or certain members of the congregation take specific actions;
 - (d) that the Archbishop should provide the minister with certain training, leave or respite and at whose cost;
 - (e) that the Archbishop suggests to the minister that he seek another position and/or that any office bearer of the parish tender their resignation;

- (f) that the Archbishop direct the minister and churchwardens to convene a vestry meeting to consider any recommendations of the Advisory Panel;
- (g) any other corrections, actions, review, decisions deemed appropriate.

22. An Advisory Panel cannot make any recommendation under paragraph (e) or (g) above unless it has first given any person intended to be affected by the recommendations 14 days notice of the recommendation with the reasons for the recommendation and has carefully considered any response to such notice (clause 23A).

23. An Advisory Panel remains convened until -

- (a) the parties advise the regional bishop that they have reached agreement and the dispute is resolved;
- (b) the Advisory Panel advises the regional bishop that it believes the recommended actions will be accepted and will resolve the dispute;
- (c) the Advisory Panel advises the regional bishop that the continuation of the process is unlikely to produce an outcome which will resolve the dispute; or
- (d) the dispute becomes the subject of litigation between the parties (clause 24).

Miscellaneous

24. The bill provides for the following further matters -

- (a) if proceedings are instituted against the minister under the Tribunals Ordinance 1962 or the Incapacity and Inefficiency Ordinance 1906 then any proceedings under the Parish Disputes Ordinance must be suspended in certain circumstances (clause 4A);
- (b) persons who voluntarily take part in proceedings with a Reconciliation Panel or an Advisory Panel agree that they will not sue in defamation in respect of anything said or done in such proceedings unless there is an allegation of actual malice (clause 25);
- (c) members of a Reconciliation Panel or an Advisory Panel who act reasonably in the discharge of their responsibility are entitled to be indemnified against all liability they may have incurred while so acting with the cost of such indemnity being borne by the parishes generally (clause 27);
- (d) the reports of the Reconciliation Panel and the Advisory Panel and all communications that take place during the procedures envisaged by the ordinance must be treated as confidential by all persons involved (clause 28).

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