

Relinquishment of Holy Orders Ordinance 1994

Explanatory Statement

Introduction

1. In July 1993 the Standing Committee received a report from a committee appointed to consider matters relating to the commission of offences by ministers. One of the committee's recommendations was that the Standing Committee consider promoting whatever legislation was necessary to allow a person to resign or relinquish his or her holy orders.

Relinquishment of Holy Orders

2. In Australia, there is no mechanism for a person in holy orders to resign or relinquish those orders. Steps are being taken at the General Synod level to change the law but it is not known whether they will be successful.

3. In 1989 a bill for a canon was promoted at the General Synod to make provision for a bishop, priest or deacon to relinquish his or her orders and be deemed to be a layperson. The General Synod referred the bill to the bishop and bishop-in-council of each diocese for review with comments to be made to the Ministry and Training Commission.

4. The bill was considered by our Archbishop-in-Council in 1991 and comments were sent to the Ministry and Training Commission.

5. The matter is still being considered by the Ministry and Training Commission but there will be difficulty in drafting a canon acceptable to all in the Australian church since there are some who believe that holy orders are indelible (that is, cannot be resigned or relinquished).

Proposed Ordinance

6. There is no impediment to the Synod passing an ordinance which puts in place a procedure whereby a person in holy orders licensed by the Archbishop may be considered to have relinquished his or her orders for the purposes of the law in this diocese.

7. A bill entitled "Relinquishment of Holy Orders Ordinance 1993" was prepared by the Legal Committee and was submitted to the Synod for its consideration. It is now at the 2nd reading stage, the 1st reading having occurred in October 1993. It is important to note that this bill does not actually result in a person in holy orders relinquishing those orders. Rather the person will be treated as if he or she had relinquished those orders.

8. In brief, the bill permits a person in holy orders licensed by the Archbishop to send a written request to the Archbishop. The request must be witnessed by an assistant bishop, an archdeacon, a solicitor, barrister or judge. The resignation or relinquishment of orders takes effect only if the request is accepted by the Archbishop. Upon acceptance, the person will be regarded as a layperson for all diocesan ordinances, rules and regulations (other than those specified in subclause 4(2)). This will, for example, enable a person who is taken to have relinquished his or her holy orders to be elected as a representative to Synod.

9. The bill also provides that it will be an offence for a person who is taken to have relinquished holy orders to assert that he or she still holds holy orders. This provision will enable proceedings to be brought before the Diocesan Tribunal against a person resident in this Diocese who is in breach of this provision since, for the purposes of the 1961 Constitution, the person will still be regarded as being a person in holy orders.

10. The bill also contains a provision which permits a person who is regarded as having relinquished holy orders to have that relinquishment rescinded.

11. The bill, if adopted, will assist in 2 major situations -

(a) A person in holy orders who wishes to serve the church as a layperson will be taken to be a layperson for the purposes of diocesan law.

(b) A sexual offender in holy orders who obtains credibility by holding out that he or she holds holy orders could be persuaded to relinquish orders. If that person asserts that he or she continues to hold orders, proceedings can be brought before the Tribunal and, if appropriate, the person can be deposed from holy orders.

Recommendation

12. 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

24 August 1994