

## **Report of Select Committee on Clerical Enquiries**

*This report was received by the Synod in 1997. The Synod has subsequently passed the Parish Disputes Ordinance 1999. The report remains relevant to the extent it deals with the bills referred to in paragraphs 83 and 84 printed as the Incapacity Ordinance 2001 and the Tribunal Ordinance 1962 Amendment Ordinance 2001.*

*The bills for the Incapacity Ordinance 2001 and the Tribunal Ordinance 1962 Amendment Ordinance 2001 have been printed incorporating amendments for which notice was given at the 2nd session of the 45th Synod and which are acceptable to the movers of the bill pursuant to resolution 30/00.*

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### **Referral**

1. The Committee was elected by the 1994 Synod pursuant to resolution 41/94 Select Committee Re Clerical Enquiries.
2. The terms of the resolution read -  
“Synod hereby appoints a Select Committee under standing order 15 -
  - (a) to review the administration of the Tribunal Ordinance and the Incapacity and Inefficiency Ordinance;
  - (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; andreport to the 1996 session of Synod.”
3. A Committee of 13 persons was elected. The membership being -

Canon B.A. Ballantine-Jones  
Professor C.R. Bellenger (resigned on 19/8/95)  
Mrs W.D. Colquhoun  
Canon I.W. Cox  
The Rev D.L. Crain  
Mr R.S. Dredge  
Mr P.C. G. Gerber  
Archdeacon G.R. Huard  
Mr W.B. Nicholson (from 30/10/95)  
Dr F.S. Piggin  
Bishop R.G. Smith  
Ms K.N. Sowada  
The Rev P.J. Tasker  
Dr A. Young.

4. Mr P.C. Gerber was elected chairman and Bishop R.G. Smith was elected Vice Chairman. The Committee met on 20 occasions, received 64 submissions and interviewed five persons.
5. On 11 April 1995 the Standing Committee advised the Select Committee that it regarded three matters as having being overtaken by the appointment of the Select Committee.
  - (a) The Standing Committee had invited the Archbishop to appoint a Committee to examine the role of the advocate of the Diocese.
  - (b) The Standing Committee had resolved to bring before the Synod legislation which requires the advocate to disqualify himself or herself from acting as advocate whenever the subject matter involved the parish of which he or she is parishioner.
  - (c) The bill for the Clergy Discipline Ordinance 1995 was not printed for the 1995 Synod.
6. On 26 June 1995 the Standing Committee granted leave for the Committee to report to the 1997 Synod.

### **Summary**

7. The Select Committee on Clerical Enquiries was established following a serious public dispute between some parishioners and the minister in the parish of Pymble. The Tribunal Ordinance and the Incapacity and Inefficiency Ordinance were both used during the dispute.
8. The Committee examined the Bible's teaching on relationships and the management of disputes among God's people. It reviewed the procedures in other dioceses for dealing with disputes, and the cases in this diocese where the two ordinances mentioned above had been used. It noted the passing of the Church Discipline Ordinance 1996.

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9. The Committee recommends the following changes to the procedures in the Diocese of Sydney -

- (a) the establishment of a disputes resolution procedure
- (b) amendments to the Tribunal Ordinance
- (c) replacement of the Incapacity and Inefficiency Ordinance with the Incapacity Ordinance 1997.

10. The Committee also recommends the establishment of a Select Committee of Synod to investigate the issue of clergy tenure in the diocese.

### **Relationships in the Congregation: Biblical Foundations**

#### *Relationships in the Old Testament*

##### *Relationship with God*

11. There is perfection of relationship within the Trinity. We are relational beings created in the image of God and are responsible to Him (Genesis 1.26). Our original relationship of fellowship with God is destroyed by disobedience (Genesis 2), and this has negative effects on our interpersonal relationships (Genesis 3-4).

12. God is righteous and just (Isa 5.16, 1.27) but forgives the repentant sinner (Ex 34.6-7; Ps 103.12). The covenant of grace between God and Abraham establishes righteousness through faith (Genesis 15), in which obedience is rewarded by peace (Lev 26.6). The special relationship of God to His people, and His deliverance and protection in times of conflict (Ps 46, 91; Genesis 45), are witness to the rule of God in the world (Ex 19.5-6).

13. The God-appointed leaders in the community of faith (priest, judge, king, prophet) are under God's rule (Deut 17,18). Inspired by God, they shepherd His people (Ezek 34). Some responsibility is delegated to other capable people (Ex 18.25-26; Deut 16.18).

##### *Relationship among God's people*

14. Under God, we are responsible for one another, to love our neighbour as ourself (Lev 19.18) even when our neighbour becomes our enemy (Ex 23.4-5). Love is an outward expression of the inward desire to act as God acts. It is willingness to forgo rights (Genesis 13; 1 Sam 24), to promote harmony (Prov 10.31), to forgive repeatedly (Jer 31.33-34), to be kind and merciful (Zech 7.9) and not to hate (Prov 10.18) or seek revenge (Lev 19.18).

15. We are to be righteous and just (Mic 6.8; Ps 15.2) because God sets the standard and judges whether we conform (Deut 32.4; Ps 89.14, 97.2). The weak and powerless are not to be oppressed (Deut 24.17). Judgements must be impartial and just (Lev 19.15; Deut 10.17-18), with fair trial (Deut 19.15,19), and time for justice to prevail (the cities of refuge, Num 35.6). We are responsible to God for the manner and extent of punishment (Lev 25.25-55) so

unbridled vengeance is not allowed (Lev 24.19-20) and punishment is not to be excessive or demeaning (Deut 25.3).

16. Discipline is to guard the holiness of God's people (Lev 25; Ezel 44.6-7; Ezra 10.8). Reconciliation is to be promoted by the community of faith (Lev 4.35).

*Christ and the Church*

*Continuity between the Old and New Testaments*

17. In the New Testament there is no change in the character of God and there is continuity in the way God acts with His people (Heb 1-3). Jesus is the Word of God (John 1.1-3). He fulfils the Old Testament (Matt 5.17) and is the full, perfect and sufficient sacrifice (Eph 1.7). We as God's people are required to love one another (John 15.12) and to live in harmony with one another (Matt 5.23-24; Eph 4.15), to follow Christ's example and put others' interest ahead of our own (Luke 10; Phil 2), to forgive again and again (Matt 18.21-35). We can teach and admonish one another yet have peace and thankfulness and joy (Col 3.14-17).

*The church under the new covenant*

18. Jesus Christ is the Head of the church, which is His body (Eph 1.15-23; Col 1.18). The New Testament emphasises the corporate nature of relationships among Christians, and our dependence on Christ, with images of the vine (John 15), and of nation, temple and cornerstone (1Pet 2.7-9). The church has a role in the purposes of God, to make known His wisdom (Eph 3.8-12) and to proclaim His praises (1 Pet 2.9). Christ exercises His Lordship of the church through His word (2 Tim 3.16) and through the work of the Holy Spirit (John 14.25-26, 16.12-14).

*Relationships within the church*

*Living as the body of Christ*

19. Christians, being members of the body of Christ with differing gifts, should work together so that the whole body is built up in love (Eph 4.15-16). Love is not resentful and keeps no score of wrongs (1 Cor 13). We should be prepared to suffer or be defrauded in dispute with a fellow Christian (1 Cor 6.7) or if persecuted by outsiders (Heb 10.34).

*Leadership in the Church*

20. The church recognises leaders as a gift of God (Eph 4.11-13); they are appointed by God and are over the congregation in the Lord (1 Thess 5.12). The governing of the church is not the prerogative of any one person; Berkhoff notes that the term 'elder' is nearly always plural **Systematic Theology, Banner of Truth Trust, p589**. However one man can lead and take charge in the congregation (1 Tim).

21. An elder (in our terms, priest, minister) must care for the church (1 Tim 3.5), be overseer and shepherd to all the flock (Acts 20.28), and lead by example willingly and eagerly (1 Pet 5.1-4).

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He must command and teach, pointing out false doctrines (1 Tim 4; Titus 1.5-9) and have responsibility for order in the congregation (1 Cor 14). The servant role is pre-eminent and the fact that a minister is God-appointed gives no right to arrogance (John 13.1-8).

22. Congregations must esteem their leaders and respect those who labour among them (1 Thess 5.12-13). They should submit to authority joyfully, imitate his faith (Heb 13.7,17), give him double honour when he rules well (1 Tim 5.17), and support him financially (1 Cor 9.14; Gal 6.6).

### *Disputes within the church*

23. Disagreements are dealt with in both the Old and New Testaments. God requires reconciliation, not insistence on rights. As members of Christ's body, we have responsibilities to one another (Rom 12.4-10; 1 Cor 12.4-26). If wronged, we should not retaliate but pray for the other person and seek their good (Rom 12.17-21; Matt 5.43-48; Jas 4). We should seek the good even of those who harm us (1 Thess 5.15).

24. We should go and speak to someone with whom we have a dispute; and if they will not listen at first, take one or two others with us; and then finally bring it to the church (Matt 18.15-17). Because God has forgiven us, we must forgive (Matt 6.12-15). We cannot expect to be reconciled to God if we are not reconciled to our brothers and sisters in Christ (Matt 5.21-24; 1 John 4.19-21).

25. Dispute resolution is the responsibility of the congregation, especially the elders (Phil 4.2-3). One of the marks of a true church is the faithful exercise of discipline. Because Christ is the Head, to neglect discipline not only shames the church but is contrary to the glory of Christ. The state exercises discipline with the 'sword' (1 Pet 2.13-14); the church exercises discipline in a spirit of deep humility (1 Pet 5.1-6). The aim is always to restore fellowship.

### *New Testament teaching about disputes and their resolution*

#### *Where a gospel issue is the cause of division*

26. Serious action must be taken where a person's actions bring the church into disrepute. A person caught in sin, perhaps because of naivety, is rebuked gently, recognising that we too are tempted by sin (Gal 6.1-2). If there is a serious dispute over sin, then the person should be approached privately, then with witnesses, and finally be judged by the church and expelled if unrepentant. This action of the church reflects the judgements made in heaven (Matt 18.15-20). Where there is public scandal such as immorality, then there is to be no tolerance. The offender should be expelled by the church, with the aim of bringing about repentance and restoration into fellowship (1 Cor 5). A divisive person should be warned and then excluded from the congregation

(Titus 3.10-11). An elder who persists in sin is to be rebuked publicly by the church (1 Tim 5.19-20).

*Where there is a dispute between individuals*

27. Individuals should be prepared to suffer loss and/or submit to the judgement of a person in the congregation; they should not resort to the civil courts (1 Cor 6). Others should help them to resolve the matter, as Paul asked the congregation at Philippi to help Euodia and Syntyche (Phil 4.2-3). The responsibility to take the initiative to solve a dispute is always with a Christian person. Jesus tells us to go to our brother with whom we have a grievance and to settle it before coming to offer a gift to God (Matt 5.21-26). To pray for and bless our enemies brings reward from God and distinguishes the Christian from the unbeliever (Luke 6.27-36).

**Procedures in Other Dioceses**

28. The Committee examined a number of examples of dispute resolution in other churches and dioceses. The Uniting Church NSW Synod, for example, has adopted a procedure which emphasises pastoral care. It commences with low key procedures at Presbytery level where first the local chairperson and then, if necessary, the Pastoral Relations Committee advise and admonish clergy and deal with complaints against clergy. If the Presbytery fails to settle the dispute, it passes to the Synod level where initially a Committee for Counselling attempts to resolve the issue through counselling procedures. If that fails then the Committee of Discipline is empanelled to hear the complaint. Certain clear categories of complaint are specified like “the wilful and persistent neglect of the duties of a minister” and “the wilful failure to comply with the constitution or any rule of the church.” The procedure at this stage is legal and the burden of proof required is “beyond reasonable doubt.” The findings and recommendations go to the Standing Committee and vary between “no action to be taken” through to “The recognition of the minister to be withdrawn.” (Uniting Church in Australia Constitution and Regulations 1993 Edition Section 7.1.1 to 7.14.1.) This progressive procedure is thought by the church to work well.

29. The Diocese of Melbourne has recently amended its Appointments Act 1971 to provide for a Board of Reference to resolve pastoral disputes. Its task is to enquire into whether there is a breakdown in pastoral relationships in a parish and if such does exist, whether it is irretrievable. References to the Board are made by the Archbishop if he is satisfied there is a breakdown and has received a written request from the incumbent, or two thirds of the Parish Council, or the Regional Bishop and not less than one half of the Parish Council, or the Regional Bishop and not less than one third of the electors of the Parish. Provision is also made for the full or partial suspension of the incumbent on full pay. If the Board finds for irretrievable breakdown, it advises the Archbishop and can also comment on the incumbent’s ongoing suitability and

the reasonableness of the Parish's expectations and demands. If the incumbent is not considered suitable for ongoing ministry, the Board may advise as to whether his licence should be revoked. Provision is made for financial and other assistance in the case of revocation.

### **History of Disputes in the Diocese of Sydney**

30. The use of the Incapacity and Inefficiency Ordinance has not been extensive. Diocesan records cover only 2 cases. It may have been used more frequently but records have not been retained. Its use might have been threatened but not applied.

31. The lack of definition of 'incapacity' and 'inefficiency' in the ordinance is clearly a problem.

#### *The Camden Case 1957-67*

32. A number of parishioners at Camden requested Synod to establish a committee of inquiry into Camden as, they alleged, the Rector was derelict in his duty and provoked deep divisions because he owned a farm which was taking up too much of his time, the parish was 1,800 pounds in debt, and the Rector was obsessed with his priestly authority.

33. In determining under what ordinance to hear the case against the Rector, a lawyer, Mr B.B. Riley, attempted to define the meaning of inefficiency and incapacity since the ordinance defined neither. He concluded that inefficiency and incapacity refers to a minister who **can** not perform his duties, while the Tribunal Ordinance applies to one who **will** not.

34. Proceedings appear to have been initiated against the Rector under the Tribunal Ordinance. It seems to have come to nothing. The matter does not appear to have been dealt with under the Incapacity and Inefficiency Ordinance. The importance of the available documentation is primarily to be found in the Riley opinion.

#### *The Redfern Case*

35. The finding of R.G. Fillingham, K.H. Short and N.M. Cameron, appointed as commissioners under the Inefficiency and Incapacity Ordinance, is dated 17 May 1973.

36. There were 19 witnesses. The Rector of St Saviour's was permitted to cross-examine all of them. The witnesses divided into those who had complaints about the rector and those who did not. Their evidence was in total conflict.

37. The commissioners defined 'inefficiency' and 'incapacity' with the help of the Oxford English Dictionary and ruled that these definitions applied only insofar as they had a bearing on 'the discharge of ministerial duty'.

38. The commissioners dismissed the charge of 'incapacity' as he was clearly not wanting in capacity to discharge his ministerial duty.

39. But they upheld the charge of 'inefficiency' and recommended his removal from the parish because of the poor way in which he read services, his incoherent sermons, and the dwindling attendances at his church which were down to 12 in the morning and 6 in the evening.

*Use of the Tribunal Ordinance*

40. Apart from the possible initial activation referred to in paragraph 34 and its use in the Pymble case, there is no evidence that the Tribunal Ordinance has been used in the Diocese of Sydney or in the Province of NSW, where dioceses are covered by similar legislation.

**Review of the Use of the Tribunal and Incapacity and Inefficiency Ordinances in the Pymble Matter**

41. In February 1993 the Rev David Gilmour was inducted as Rector of Pymble. Disputes between the Rector and some parishioners soon arose which led to complaints to Bishop Barnett. In November 1993 the Diocesan Registrar received charges against the Rector under the **Tribunal Ordinance 1962** brought by 18 parishioners including some churchwardens, parish nominators and members of the parish council. The dispute concerned allegations of shortcomings in pastoral leadership and there was never any suggestion of immoral conduct, disgraceful conduct or doctrinal error. **The Board of Enquiry** was called. The Ordinance provides for the Diocesan Advocate to have "conduct of charges before the Tribunal". The Advocate, at the time, was also a member of the Parish of Pymble. A "congregation meeting" at the time did not resolve the dispute.

42. The Chancellor of the Diocese advised the Archbishop that the **Incapacity and Inefficiency Ordinance 1906** could be appropriate in this dispute and, in December, the **Enquiry Committee** under this Ordinance became involved.

43. The complainants under the Tribunal Ordinance sought to withdraw their action but the **Board of Enquiry** under this ordinance had commenced deliberations and later reported that no prima facie case had been made so there was no "charge proper to be heard".

44. In March 1994, the **Enquiry Committee**, by a majority, informed the Archbishop that there were "circumstances which raised the question of the removal of the rector from the parish". So, as the ordinance requires, the Archbishop appointed three commissioners - Mr Justice R. Blanch, Bishop K. Short and the Rev J. Brook. The commissioners reported to the Archbishop in September 1994 that the rector should be removed from his cure



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at Pymble on the grounds of “significant incapacity as a pastor and leader in the parish”.

45. Mr Gilmour declined to appear before the Commissioners disputing the process both as to its legality and pastoral appropriateness.

46. Many questions were asked at the October Synod, several personal explanations were made and letters supporting both sides were circulated. The Archbishop failed to reach agreement with Mr Gilmour about resignation and appointment to another parish so in December he issued the rector with a deprivation order.

### *The Committee's Views*

47. The Committee believes the Tribunal Ordinance is an inappropriate way to deal with pastoral problems.

48. The Committee is concerned that there seems to be no mechanism under either ordinance for stopping an action once it has begun, even if all parties wish to do so.

49. The Committee considers that it is unfair for these two ordinances to be operating at one time and that a clergyman should know which matters will be dealt with, under which ordinances and at what time.

50. The Committee recognises that the definition of **incapacity** in the Incapacity and Inefficiency Ordinance is a matter of dispute. Some hold the definition should be restricted to mental or physical incapacity. Others hold it should be extended to issues of pastoral leadership. This disagreement of definition added to the pain in the Pymble dispute and the Committee decided unanimously to recommend the removal of this ambiguity in future by restricting the Ordinance to cases of mental and physical incapacity.

51. The Committee recognises that there are few avenues open to parishioners to resolve a dispute with a minister. Often either the disaffected parishioners or the rector leave. The parishioners frequently take their complaint to the bishop, however he has no real power to enforce any solution he may recommend. His role is primarily pastoral and his discipline, with regard to the rector, is effective only if the rector accepts his direction.

52. Recourse to legal procedure is rare. With no clear dispute resolution procedure to follow, recourse to legal procedure was eventually taken in the Pymble matter. This led to a solution but also led to further breakdown of relationships within the parish and to much adverse publicity for the Anglican Church in Sydney as well as the expenditure of a reported \$266,353 not including overheads and the enormous cost of diversion of resources. Continuing mediation in a formal process would have been preferable. There is need, as much as possible to get away from legal solutions in disputes about ministerial inefficiency and the resultant relationship breakdowns.

53. The Committee believes any dispute arising from inefficiency will be best decided through a dispute resolution procedure.

54. The revocation of his licence is a severe threat against a rector and so is likely to impede proper dispute resolution procedure. For this reason the Committee has not included this sanction within the proposed dispute resolution procedure. Revocation of licence raises the issue of tenure which cannot be considered only in the narrow context of serious disputes. Tenure and its implications for ministry were not in the terms of reference for this Committee. We recommend that this subject should be an urgent concern for others.

#### **Parish Disputes**

55. The Committee determined that formal procedures were needed to provide a **first step** in the resolution of disputes within parishes. The Committee is of the view that the process should be capable of rapid implementation and should embrace a wide range of disputes and accordingly the majority of disputes should be capable of resolution using the recommended procedures.

56. The Parish Disputes Ordinance 1997 legislates for the introduction of a dispute resolution procedure. There are 3 stages described -

- (a) Recognition, notification and verification;
- (b) A reconciliation procedure; and
- (c) An arbitration procedure.

57. The process envisages that Synod will appoint a team of lay and clerical members to act as a pool from which reconciliation and arbitration teams will be drawn as required.

58. The objective of the recommended procedures is to resolve disputes in a manner which provides for continuity of Gospel ministry, restores relationships and achieves reconciliation. The recommended process excludes legal representation, and is capable of being implemented quickly and at minimum cost to the parties or the Diocese.

59. In the event that a resolution is not reached through these procedures, recourse would be to the formal procedures provided by existing ordinances and ordinances amended as a result of this report.

#### **Clergy Tenure**

60. The Committee recognised that tenure -

- (a) is a complex and potentially emotional subject;
- (b) may be viewed by some as an important element in disputes resolution;
- (c) has many variants, none of which are perfect; and

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- (d) correctly managed, has the capacity to significantly enhance our Gospel work;

61. Research into tenure practices in other denominations, academic professions, the public service and in secular vocations revealed four major models of tenure -

*Protected tenure*

- (a) This is as our Diocese operates today and where, except for severe event, the minister has tenure until retirement.

*Fixed term appointments*

- (b) Ministers are appointed for a fixed term, at the end of which they must be reappointed to the post or move on.

*Third party appointments*

- (c) After an initial fixed term, certain parties can give notice of termination of an appointment.

*Parish (congregational) appointments*

- (d) The parish holds the right of employment.

62. A wide variation within these models was found and a brief study was made of the benefits and problems that each may offer in the context of disputes resolution.

63. The Committee found that it was very difficult to limit the study of tenure to disputes resolution. The tasks of pastoring and teaching were found to be strongly impacted by tenure variables such as contracts of engagement, performance measurement and ongoing training. The rights and needs of parishes, ministers, the Archbishop and others also affected the arguments.

64. The Committee therefore resolved to recommend to the Synod that tenure be treated as a separate subject, worthy of a major review in its own right. One of our major recommendations therefore is that the Synod establish another Select Committee charged with a review of tenure. The recommendation is that the Select Committee has 13 members consisting of 6 clergy (including not less than 4 incumbents) and 7 lay persons with terms of reference that the Committee shall -

- (a) review all aspects of clergy tenure in this diocese;
- (b) examine alternative tenure and employment practices for clergy; and
- (c) report to the 1999 session of Synod.

(Refer to paragraph 73 for another matter to be considered by the proposed Select Committee).

### **Incapacity and Inefficiency Ordinance**

65. The Committee determined that the nature of incapacity and inefficiency are so different that they should not be considered within the framework of a single ordinance.

66. The Committee has come to the view that incapacity should be restricted to consideration of whether a clergy person is incapable of performing his ministerial duties by reason of mental or physical incapacity.

67. The Committee noted that the interpretation of the meaning and intention of the Incapacity and Inefficiency Ordinance was a matter of dispute between historians and lawyers. Without wishing to take sides on the argument as it relates to the 1906 ordinance and the use it was put to in the Pymble matter the committee took the view that it should be guided, as to the future consideration of the questions of incapacity by the latest formulations on the matter by the Canon Law Commissions of General Synod which in 1995 promoted a Canon to the General Synod regulating the question of incapacity as it relates to diocesan bishops.

68. In that Canon incapacity was defined as,

- (a) incapable, continuously or intermittently, of managing the person's affairs; or
- (b) by reason of a physical or mental disability of any kind, unable, continuously or intermittently, to make reasonable judgements in respect of matters relating to all or any part of the carrying out of the person's affairs or the affairs of the person's office as the bishop of the diocese;

69. The Committee is of the view that the definition should be adopted by this diocese to regulate its procedures as they relate to incapacity of clergy. It takes this view because that definition is one that is widely used in the community and it was the one adopted by the General Synod for bishops. If that Canon was to be adopted by the Sydney Diocesan Synod, and the committee sees no reason why it should not be, then it is of the view that the same definition should apply to both bishop and clergy for the purposes of regulating actions in this field.

70. Accordingly the committee has redrafted the 1906 ordinance so as to reflect the definition of incapacity adopted by the General Synod and recommends that it be adopted by the Sydney Synod.

71. The Synod should have the opportunity to decide whether it wants to retain the ordinance in its present form, with the potential for it to be used as it was in the Pymble case, or to amend it in a way that is essentially the same one as the General Synod Canon as it applies to bishops. The matter of definition should be decided once and for all by the Synod.

72. The committee notes that the General Synod has not taken up the question of inefficiency as it relates to bishops and the committee believes that the diocese should follow the same course in the proposed Incapacity Ordinance. General questions of efficiency and suitability as they apply to the performance of clergy are likely to be covered by the dispute resolution procedures dealt with elsewhere in this report.

73. The Committee is of the view that the proposed Select Committee on Clergy Tenure should address the broader matters of clergy performance and suitability.

#### **Tribunal Ordinance**

74. Clause 5 of this Ordinance provides that the Tribunal may only hear the charge after a Board of Enquiry "allows it to be a charge proper to be heard". The Committee proposes that a clause be added to prevent any other body hearing or determining a charge or complaint until the matter has proceeded to a conclusion under the Ordinance.

75. The Committee believes that it should be open to the Board of Enquiry to find that whilst a prima facie case has been made out, it is of the opinion that the Tribunal would not on the evidence find the charge proven. An amendment to clause 14 is proposed to incorporate this option.

76. The Committee proposes an amendment to clause 16 to ensure that appropriate arrangements are made for the suspended person.

77. Amendments and additions are proposed to clause 23 to make provisions for the role of the Advocate to be performed by an Assistant Advocate in appropriate circumstances.

78. The Tribunal Amendment Ordinance 1997 incorporates the above amendments.

#### **Other Considerations**

79. The Committee took into consideration the Appointments Act 1971 of the Diocese of Melbourne and the procedures of Parliamentary Select Committees.

80. A recent book "Churches, Clergy and the Law" by P. McFarlane and S. Fisher (1996) makes it clear that the clergy-church relationship is not necessarily contractual or enforceable, but that the rules of the church organisation would be taken into account by a court hearing a dispute.

#### **Recommendations**

81. The Committee recommends that the Synod passes the Parish Disputes Ordinance 1997.

82. The Committee recommends that the Synod appoints a Select Committee to consider Clergy Tenure.

83. The Committee recommends that the Synod passes the Incapacity Ordinance 1997 to repeal the Inefficiency and Incapacity Ordinance 1906.

84. The Committee recommends that the Synod passes an Ordinance to amend the Tribunal Ordinance 1962.

For and on behalf of the Select Committee

P.C.G. Gerber  
*Chairman*

27 June 1997