

Retirements Ordinance 1993 Amendment Ordinance 2015

Explanatory Report

Key points

- The bill will require that the terms of any licence issued to a minister who has reached the retirement age be such that, after giving an opportunity to show cause, it may be revoked upon not less than 30 days notice being given to the minister.
- The amendment addresses a potential constitutional deficiency in the drafting of the existing provision.

Purpose

1. The purpose of this report is to explain the amendments in the bill for the *Retirements Ordinance 1993 Amendment Ordinance 2015*.

Recommendation

2. The Synod pass the Bill as an ordinance of the Synod.

Explanation of the Bill

3. The *Retirements Ordinance 1993* (the “Principal Ordinance”) stipulates a retirement age for parochial ministers and other senior clergy (“Ministers”). In most cases the retirement age is the age that the Minister must reach in order to qualify for the aged pension under the *Social Security Act 1947 (Cth)*. The Principal Ordinance contains procedures for the retirement age of a Minister to be extended to an age that is not beyond 70 years.

The revocation of licences of Ministers who have reached the retirement age

4. A Minister who has reached the retirement age may still be licensed to a position in the Diocese. However clause 8(2) of the Principal Ordinance requires that any such licence issued by the Archbishop must include terms which allow it to be revoked at any time.

5. There is a concern that clause 8(2) of the Principal Ordinance may not be consistent with section 3(4) of the Schedule of the *Anglican Church of Australian Constitution Act 1902* which provides that –

The Synod of each Diocese shall have power to determine by ordinance in what cases the licence of a member of clergy licensed by the Bishop of the Diocese may be suspended or revoked. Any such licence may be suspended or revoked by the Bishop of the Diocese at the request of the member of the clergy, or (after opportunity given to that member of the clergy to show cause) in such of the said cases as the Synod shall by ordinance determine, save as aforesaid, the licence shall not be suspended or revoked, except as a consequence of a judgment or finding of the tribunal or of some other court of competent jurisdiction.

6. This part of the constitution was considered in the case of *Baker v Gough* [1963] NSW 1345. The guiding principle from *Baker v Gough* is that the ordinance must specify the circumstances in which a licence can be revoked and provide that the revocation is to take place after giving the Minister the opportunity to show cause.

7. It is proposed that clause 8(2) of the Principal Ordinance be amended to require that the terms of any licence issued to a Minister who has reached the retirement age be such that, after giving an opportunity to show cause, it may be revoked upon not less than 30 days notice being given to the Minister. The expiry of the period of notice constitutes the circumstance in which the licence can be revoked.

8. The proposed amendment to clause 3(2)(b) is consequential since there will be no licences that are revocable by the Archbishop “at any time”.

Use of the title “canon emeritus”

9. It is proposed to delete clause 8(1) of the Principal Ordinance. Clause 8(1) provides that –
A clerical canon, upon retiring, is to be given the title of “canon emeritus”.
10. This is inconsistent with clause 1 of the *Canon Emeritus Ordinance 1944*, which provides –

The Archbishop is hereby authorised at his discretion from time to time to nominate and appoint Clerical Canons to the title and status of a Canon Emeritus upon such Canon respectively ceasing to be member of the Cathedral Chapter by resignation.

11. A question has also arisen as to whether a resignation from the Cathedral Chapter may be construed as a retirement from the chapter. The deletion of clause 8(1) will mean that the title is only conferred at the nomination and appointment of the Archbishop.

For and on behalf of the Standing Committee

ROBERT WICKS
Diocesan Secretary

15 September 2015