

Retirements Ordinance 1993

Explanatory Statement

Introduction

1. The bill for the Retirements Ordinance 1992 was considered by Synod in 1992 and was deferred to the 1993 session of Synod.

Retirements Bill

2. The purposes of the Bill are -

- (a) to remove discrepancies which exist in the Sydney Diocesan Retirements Ordinance 1969 ("1969 Ordinance") in relation to the retirement ages of various persons;
- (b) to specify retirement ages for persons who are licensed to officiate by the Archbishop but who are not clergymen;
- (c) to reconstitute the Diocesan Retirements Board and state in clearer terms its functions and procedures; and
- (d) to repeal the 1969 Ordinance.

3. Part 1 of the Bill contains the citation, definitions and provisions dealing with the application of the Bill.

4. Part 2 of the Bill contains provisions dealing with retirement ages. In relation to persons covered by the 1969 Ordinance it restates the existing retirement provisions although in some cases retiring ages for some persons have been altered. The Bill specifies retirement ages for persons who are licensed to officiate by a licence which under its terms is not revocable by the Archbishop at any time. This may cover a number of persons who are not subject to the terms of the 1969 Ordinance. The attached table summarises the provisions of part 2 and compares them to the equivalent provisions of the 1969 Ordinance.

5. Part 3 of the Bill constitutes a new Diocesan Retirements Board and sets out in procedures of that Board. The provisions are substantially to the same effect as clauses 7 to 16 of the 1969 Ordinance which apply to the Diocesan Retirements Board established under that ordinance. One change however is that members of the Board will vacate office at age 65 and a person over the age of 65 cannot be appointed the Board. In the 1969 Ordinance, the age in each case is 72 years.

6. Part 4 of the Bill deals with transitional matters which include providing for the first members of the Diocesan Retirements Board and consequential provisions relating to the extension of retirement ages and applications for extension of retirement ages etc made under the 1969 Ordinance. In particular there is a provision to the effect that the Bill does not affect the retirement age of the Archbishop holding office on the date that the ordinance is assented to.

7. In part 5 of the Bill the Diocesan Retirements Board constituted under the 1969 Ordinance is dissolved, the 1969 Ordinance is repealed and other ordinances amended to reflect the repeal of the 1969 Ordinance.

Other Matters

8. At the 1992 Synod a view was expressed that the provisions of the Bill will infringe part 4E of the Anti-Discrimination Act 1977 in so far as those provisions purport to apply to persons who are employees (as opposed to office holders). Part 4E prevents compulsory retirement of employees on the grounds of age with effect from 1 January 1993. This view was contrary to a view previously expressed by the Legal Committee.

9. This matter was referred to the Legal Committee which has noted that the difference of opinion is based on differences in the interpretation of the scope of the exemption in the Act for religious bodies. Nevertheless the Legal Committee has recommended that Synod should consider passing the Bill. The Legal Committee gives 3 reasons. First, the Bill makes desirable changes to the provisions dealing with the Retirements Board. Secondly, the Bill will standardise retirement ages. Thirdly, nothing is lost in passing the Bill since if provisions of the Bill are invalid on the basis that they infringe part 4E, then the provisions of the 1969 Ordinance which apply to employees are also invalid.

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10. For clarification it is recommended that clause 12 of the Bill be made subclause 12(1) and that a new subclause 12(2) be inserted in the following terms -

"(2) For the purposes of this ordinance, a lay member ceases to be a member of the Synod if he or she resigns therefrom or, unless re-elected, on that day being the day immediately prior to the first day of the first ordinary session of a Synod to which that member has not been elected."

For and on behalf of the Standing Committee

MARK PAYNE
Legal Officer

21 August 1993

	Retirement age under the 1969 Ordinance	Who extends retirement age under the 1969 Ordinance	Proposed retirement age under the 1992 bill	Who extends retirement age under the 1992 bill
Archbishop	age 70 extendable up to age 71	Synod or Standing Committee	age 65 extendable up to age 70	Synod or Standing Committee
Assistant Bishop	age 65 extendable up to age 70	Archbishop and Standing Committee	age 65 extendable up to age 70	Archbishop and Standing Committee
Dean	age 65 extendable up to age 70	Archbishop and St Andrew's Cathedral Chapter	age 65 extendable up to age 70	Archbishop and St Andrew's Cathedral Chapter
Archdeacon	age 65 extendable up to age 70	Archbishop and Standing Committee	age 66 extendable up to age 70	Archbishop and Standing Committee
Clerical Canons	age 70	-	age 65 extendable up to age 70	Archbishop on recommendation of Board
Parochial Clergy	age 65 extendable up to age 70	Archbishop on recommendation of Board	age 66 extendable up to age 70	Archbishop on recommendation of Board
Other clergy licensed to officiate under non-revocable licence	age 66 extendable up to age 70	Archbishop on recommendation of Board	age 65 extendable up to age 70	Archbishop on recommendation of Board
Deaconess/Parish Sister	age 60 extendable up to age 65	Archbishop on recommendation of Board	age 66 extendable up to age 70	Archbishop on recommendation of Board
Other persons licensed to officiate under non-revocable licence	-	-	age 65 extendable up to age 70	Archbishop on recommendation of Board