

Review of the Presentation and Exchange Ordinance 1988

(A report from the Standing Committee)

Background

1. On 24 June 2002, the Standing Committee appointed a committee chaired by Canon Jim Ramsay (the "Ramsay committee"), to review the Presentation and Exchange Ordinance 1988 and make recommendations to the Standing Committee including any recommendations about suggested changes to the ordinance and the need (if any) for guidelines for parish nominators, bishops and archdeacons and diocesan representatives.

2. The Ramsay committee reported to the Standing Committee on 30 May 2005.

3. On 27 June 2005, the Standing Committee requested that the Policy 4 Committee –

- (a) assess the recommendations of the Ramsay committee, and
- (b) establish an outline of the presentation process, and
- (c) refine the guidelines already in existence, and
- (d) recommend necessary changes to the Presentation and Exchange Ordinance 1988 with a view to their promotion to Synod,

and further requested that the Policy 4 Committee co-opt and consult as appropriate to ensure a wide representation of views are taken into account.

4. The Standing Committee also referred the following motion to the Policy 4 Committee for consideration and report –

"Standing Committee requests that any review of the Presentation and Exchange Ordinance 1988 consider the inclusion in that ordinance of a requirement that the regional archdeacon –

- (a) consults with the Director of the Professional Standards Unit, the former rector or senior minister and the churchwardens, and
- (b) advise the rector-elect or senior minister-elect prior to the commencement of his ministry of any person who may pose a risk to children or other vulnerable people because of known convictions, findings of a court, tribunal or other employment body or known allegations which are not false, vexatious or misconceived."

5. On 25 July 2005, the Standing Committee requested that the Policy 4 Committee undertake the work referred to in Synod resolution 13/04 namely –

“In the light of Policy 4 of the Diocesan Mission Statement, and noting our desire to assist parishes to expand and grow, Synod requests that the Standing Committee review clauses 8 and 15 of the Presentation and Exchange Ordinance 1988, and consider the possibility of amendments which would allow the rector of a parish to voluntarily accept less than the minimum stipend and allowances for an agreed period of time without necessarily compromising the status of the parish under the Presentation and Exchange Ordinance 1988.”

6. The Policy 4 Committee, comprising Bishop Rob Forsyth (chair), Mr Mark Payne, Mr Robert Wicks and, until his death, Mr Michael Orpwood QC, met on several occasions to consider these matters. The Deputy Registrar, Mrs Catherine Rich, and the Legal Officer, Mr Steve Lucas, attended the first meeting. The Manager, Policy and Diocesan Services, Mr Martin Thearle, attended the second and subsequent meetings.

7. The bishops and archdeacons, diocesan members of the Presentation Board and members of the Ramsay committee were consulted about the recommendations made in this report. A number of the recommendations were made in response to comments made by these people.

Review arising from the Ramsay committee recommendations

8. The committee noted the following main comments made by the Ramsay committee in relation to the Presentation and Exchange Ordinance –

- (a) the majority of persons involved in the presentation process had no real dissatisfaction with the process and operation of the ordinance,
- (b) there is nonetheless confusion about questions of timing under the ordinance which should be clarified,
- (c) the exchange provisions in the ordinance are no longer relevant and should be removed,
- (d) there is no in principle reason preventing the Presentation Board from being convened at any point, even up to and, including, a date prior to the incumbent leaving his position,

- (e) non-legislative and non-coercive guidelines should be provided to parish representatives about the presentation process, and
- (f) a new ordinance should be promoted to Synod enshrining the intention of the ordinance (for example Appointment of Incumbents Ordinance) or the current ordinance needs to be simplified and made more accessible to those without a legal mindset.

9. The committee agrees in general terms with most of these comments. However it does not agree with some of the particular recommendations made by the Ramsay committee to address the issues arising from its comments.

10. The committee also considers there are a number of additional reforms not raised by the Ramsay committee that should be made to facilitate the presentation process.

General clarification of presentation process

11. The committee agrees that the process of presentation under the ordinance is difficult to follow and should be made more accessible.

12. It considers that a significant amount of clarity could be achieved by restructuring the provisions of the ordinance. In particular, the appearance of provisions dealing with the membership of the Presentation Board towards the beginning of the ordinance (clauses 4 to 7 and 9 to 14A) tends to obscure the presentation process for the ordinary reader. These provisions should be moved to a discrete section towards the end of the ordinance.

13. Similarly, there are a number of provisions which deal with circumstances which do not often arise in the presentation process. For example, suspension of proceedings if a proposal has been made to change the classification of the parish to a provisional parish (clause 17) and surrender of right of presentation (clause 20). These should be included in a miscellaneous section towards the end of the ordinance in order to give prominence to the usual process of presentation.

14. A flow diagram showing the usual process of presentation should also be included in the ordinance.

Eligibility to elect parish representatives and right to benefits under the ordinance

15. Clause 8 of the ordinance sets out the financial criteria which a parish must meet before it is eligible to elect parish representatives. The main purpose of clause 8 is to send an early signal to parishes who are struggling financially that they are unlikely to have the right of presentation under the ordinance if a vacancy arises.

16. In order to give clause 8 some meaningful operation, the Registry requires the chairman of the meeting at which the parish representatives were elected to certify that the conditions for election under clause 8 have been fully met. Despite the certification, the committee considers that a significant majority of parishes would either be unaware of the operation of clause 8 or not be in a position to determine whether the requirements of clause 8 have been met.

17. On balance the committee considers that any purpose served by clause 8 is negated by its impractical application. Accordingly clause 8 should be removed.

18. As a consequential matter, clause 15 should be amended to provide that a parish has the benefits under the ordinance if the parish meets the financial criteria that currently apply under that clause for the period 12 months before the vacancy arises.

Requirement to provide free use of a residence

19. One of the prerequisites to the right of presentation under clause 15 is that the rector is provided with free use of a residence approved as suitable by the Archbishop.

20. The committee considers that this requirement would be met if the rector is provided with free use of a residence which is either "owned" or leased by the parish. A concern has however been raised that a financially viable parish which pays its rector a housing allowance (for example because the rector chooses to live in his own home) would not be providing a residence and therefore would not be entitled to a right of presentation.

21. In order to accommodate this concern, the committee proposes a slight extension of this criteria with the effect that during the requisite period the rector must have been "provided with free use of a residence or otherwise housed in accommodation approved as suitable by the Archbishop". As a consequential matter, the corresponding requirement in clause 6(b)(iii) of the Parishes Ordinance 1979 should be similarly extended.

Vacancies arising on retirement

22. Under clause 3(2), a vacancy occurs in a parish on the Archbishop acknowledging in writing a notification by the incumbent of his intention to retire on a date which is not more than 6 months after the date of notification. Under clause 3(3), a vacancy occurs on the Archbishop accepting the resignation of the incumbent, although there is no equivalent limiting period within which the resignation must take effect

23. The committee understands the rationale for including a 6 month limit on retirement notifications, namely the fact that retirement dates are usually known much further in advance than resignation dates hence the greater potential for retirements to be notified so far in

advance as to make it impractical to commence the presentation process. On the other hand the committee recognises that in some circumstances the 6 month limit on retirement notifications may unduly hold up the process of finding a replacement minister. The issue is one of balance.

24. The committee considers that a 12 month limit on retirement notifications would achieve a more appropriate balance.

Commencement of presentation process

25. The presentation period effectively commences on the date on which the first meeting of the Presentation Board is convened (see clause 36(1)). The ordinance requires that the first meeting of the Presentation Board should as far as practical be held within 28 days after the date on which the vacancy has occurred (clause 23(2)).

26. Based on information provided by the Deputy Registrar, the committee understands that it is rare for the first meeting of a Presentation Board to be held within 28 days after the date on which a vacancy occurs. In the committee's view, this suggests that the mechanics of the ordinance at this point are unhelpful and need to be modified.

27. The committee considers that the first meeting of the Presentation Board should be held, as far as practicable, within 1 month after the date on which the Archbishop's certificate is issued under clause 18 of the ordinance.

Suspension of presentation process

28. The Archbishop is currently able to suspend the commencement of the presentation process if the Archbishop receives a proposal to change the classification of the parish to a provisional parish (clause 17).

29. The committee consider that there would be merit in giving the Archbishop a general discretion to suspend the commencement of the presentation process. The Archbishop should be capable of exercising this power only in exceptional circumstances on the application of a majority of the parish representatives with the concurrence of the regional bishop. Exceptional circumstances may arise, for example, where the rector has resigned his position due to a significant dispute within the parish and there is a need for a "transitional ministry" to be put in place to deal with the dispute before a new rector is appointed.

Conferences with the Archbishop

30. Clause 21 of the ordinance currently provides for an initial conference with the Archbishop prior to the Presentation Board exercising its function.

31. The committee considers that while an initial conference with the Archbishop may be helpful in some cases, this is not a matter that

needs to be legislated and therefore should be removed from the ordinance. The desirability of an initial conference with the Archbishop in some circumstances would more properly be dealt with in any guidelines.

32. The committee does however consider that the entitlement of the Archbishop, the regional bishop or any 3 members of the Presentation Board to request that a conference be held between the Board and the Archbishop under clause 22 should be preserved.

Failure to make a presentation after 3 months

33. The Presentation Board must make a presentation within 3 months of the presentation process commencing otherwise the right of presentation lapses (clause 36). There is a similar 3 month time limit imposed on subsequent presentations (clause 37(2)).

34. The committee noted there was some evidence of Boards making "dummy presentations" within the 3 month period in order to retain the right of presentation. This practice involves presenting the Archbishop with a name of a person who is known will not accept the offer, commonly the archdeacon.

35. The committee considered that the 3 month limits on making presentations are not the best way of fostering a practice and culture of making genuine presentations early in the process.

36. The committee considered whether a longer period to make an initial presentation should be adopted (eg. 6 months with a 3 month limit on subsequent presentations). However the committee was of the view that, on balance, formal time limits under the ordinance to make initial and subsequent presentations should be removed entirely.

Lapsing of right of presentation after 13 months

37. Under clause 39 of the ordinance, the right of presentation ultimately lapses after a period of 13 months.

38. The committee took the view that it would not be appropriate to reduce this period. On the other hand an extension of the period would have the effect of unduly extending the process in some cases. The committee considers that no change should be made to the existing 13 month period.

Parish representatives – tenure of office

39. Parish representatives who are in office at the time a vacancy arises, remain in office until such time as the vacancy is filled (clause 12(2)). If however a further vacancy occurs prior to the appointment of new parish representatives, the election of new parish representatives will take place in the context of the further (and presumably unexpected) vacancy. The committee considers this would usually be undesirable.

40. Accordingly the committee considers that parish representatives who are in office at the time a vacancy occurs should continue in office until their successors are elected after the filling of the vacancy.

Diocesan representatives – filling of vacancies

41. Under clause 5 of the ordinance the Synod elects 1 clergyman and 1 lay person to be alternates for the diocesan representatives on the Presentation Board. An alternate acts in place of a member where the member is unable to attend meetings of the Board for a period of at least 1 month. An alternate who acts in place of a member in respect of a presentation for a particular parish is entitled to attend all meetings of the Board for that presentation. Otherwise the alternate ceases acting as a member when the member of the Board returns (clause 24).

42. Casual vacancies in the office of diocesan representative are filled by the Standing Committee (clause 7(2)). This usually involves the Standing Committee declaring the vacancy at one monthly meeting and filling it at a subsequent meeting. A concern has been raised that during this time the Presentation Board is without full representation. This seems undesirable and, in view of the existence of alternates, unnecessary.

43. In order to address this concern, the committee considers that alternates should fill any casual vacancy as a matter of course. An alternate who fills the vacancy should hold office until the next ordinary session of the Synod at which time the vacancy should be filled by the Synod.

Meetings of the presentation Board

44. The committee understands that it is not always feasible for members of the Presentation Board to physically meet and that sometimes it would be desirable for meetings to be held using teleconferencing and other electronic means.

45. There is some judicial authority concerning company meetings which suggests that the requirement to meet would be satisfied if there is a meeting of the minds of members and that the requirement to meet does not necessarily involve a physical meeting together.

46. However for abundant caution the committee considers that the ordinance should make specific provision to enable meetings of the Board to be held using teleconferencing or other similar electronic means.

Removal of exchange provisions

47. The committee agrees with the Ramsay committee that the exchange provisions in Part 4 are rarely used and should be removed.

Use of the term "nomination" rather than "presentation"

48. The term "presentation" is somewhat dated. Further, the parish and diocesan representatives on a Presentation Board are almost universally known as nominators.

49. The committee considers that the use of the term "presentation" (and cognate terms in the ordinance) should be replaced with the term "nomination". The terminology used to describe representatives on a "Nomination Board" should be amended to reflect common parlance, namely "nominators". The ordinance should be renamed the Nomination Ordinance.

Review of the current guidelines for presentation

50. The committee has not reviewed the current guidelines for presentation. It considers that the appropriate time to do this would be after the ordinance itself has been revised.

51. The Committee does however consider that the ordinance should include a provision requiring the Registrar to prepare suitable guidelines about the presentation process for parish representatives. Further, in addition to circulating a copy of the ordinance to parish representatives on the Board when advising that a vacancy has occurred (clause 44), the Registrar should also circulate a copy of the guidelines.

Review of clauses of 8 and 15 of the Presentation and Exchange Ordinance 1988 (13/04)

52. Synod resolution 13/04, provides –

"In the light of Policy 4 of the Diocesan Mission Statement, and noting our desire to assist parishes to expand and grow, Synod requests that the Standing Committee review clauses 8 and 15 of the Presentation and Exchange Ordinance 1988, and consider the possibility of amendments which would allow the rector of a parish to voluntarily accept less than the minimum stipend and allowances for an agreed period of time without necessarily compromising the status of the parish under the Presentation and Exchange Ordinance 1988."

53. The committee considers that the suggestion should not be adopted for 4 reasons.

54. Firstly, an inherent principle in the ordinance is that with rights come responsibilities. This principle should be preserved. If a parish cannot demonstrate a minimum level support for its minister, the parish should not have the right to participate in the selection of his successor.

55. Secondly, the committee can see no obvious or necessary correlation, as is implied in resolution 13/04, between the right of presentation and the capacity of a parish with such a right to expand and grow.

56. Thirdly, the resolution contemplates that the rector will voluntarily accept a below minimum stipend for a period. In reality the committee believes that the suggestion has the potential of exposing a minister to unacceptable pressure from his parish to accept less than the minimum level of stipend in order to preserve the parish's right of presentation.

57. Fourthly, if in a particular case there are good reasons to grant a right of presentation to a parish despite the parish failing to meet the usual minimum criteria, this can already be done by the Archbishop-in-Council under clause 18.

Consultation with PSU about persons who may pose an unacceptable risk

58. At the Standing Committee's request, the committee also considered the following motion –

“Standing Committee requests that any review of the Presentation and Exchange Ordinance 1988 consider the inclusion in that ordinance of a requirement that the regional archdeacon –

- (a) consults with the Director of the Professional Standards Unit, the former rector or senior minister and the churchwardens, and
- (b) advise the rector-elect or senior minister-elect prior to the commencement of his ministry of any person who may pose a risk to children or other vulnerable people because of known convictions, findings of a court, tribunal or other employment body or known allegations which are not false, vexatious or misconceived.”

59. The committee considers that the ordinance should only deal with what happens up to the appointment of a new minister and not what happens following an appointment.

60. In any event the committee understands that the process referred to in the motion has, in effect, already been put into effect administratively. The committee considers that this, rather than legislation, is the appropriate way of regulating issues of this type.

Recommendations

61. The committee recommends that the Standing Committee receive this report and that an ordinance incorporating the

recommendations in this report be brought to the next meeting with a view to it being promoted to the Synod by request of the Standing Committee.

Standing Committee's response

62. At its meeting on 26 June 2006, the Standing Committee requested that legislation amending the Presentation and Exchange Ordinance 1988 be prepared in accordance with the following principles –

- (a) the provisions of the ordinance should be re-structured in accordance with paragraphs 12 and 13 of the report and a flow diagram showing the usual process of presentation should be included in the ordinance, and
- (b) clause 8 of the ordinance dealing with the right to elect parish representatives should be removed and clause 15 should be amended to provide that a parish has the benefits under the ordinance if the parish meets the financial criteria that currently apply under that clause for the period of 12 months ending 31 December of the previous financial year before the vacancy arises, and
- (c) the requirement in clause 15 of the ordinance to provide the rector with free use of a residence approved as suitable by the Archbishop should be extended to require that the rector must be "provided with free use of a residence or otherwise housed in accommodation approved as suitable by the Archbishop" (with a corresponding amendment being made to clause 6(b)(iii) of the Parishes Ordinance 1979, and
- (d) clause 3(2) of the ordinance should provide for a 12 month limit on retirement notifications, and
- (e) the first meeting of the Presentation Board should be held, as far as practicable, within 1 month after the date on which the Archbishop's certificate is issued under clause 18 of the ordinance,
- (f) the Archbishop should be given a general discretion to suspend the commencement of the presentation process, such discretion capable of being exercised only in exceptional circumstances on the application of a majority of the parish representatives with the concurrence of the regional bishop, and
- (g) clause 21 of the ordinance providing for an initial conference with the Archbishop should be removed, and
- (h) the 3 month time limits on making initial and subsequent presentations under the ordinance should be removed, and

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- (i) parish representatives who are in office at the time that a vacancy occurs should continue in office until their successors are elected after the filling of the vacancy, and
 - (j) the ordinance should include a specific provision enabling meetings of the Presentation Board to be held using teleconferencing or other similar electronic means, and
 - (k) the exchange provisions in part 4 of the ordinance should be removed,
 - (l) the use of the term “presentation” (and cognate terms in the ordinance) should be replaced with a term “nomination”, the terminology used to describe representatives on the resultant “Nomination Board” should be amended to reflect common parlance, namely “nominators” and the ordinance should be renamed the Nomination Ordinance, and
 - (m) the ordinance should include a provision requiring the Registrar to prepare suitable guidelines about the presentation process for parish representatives and should provide that the Registrar, in addition to circulating a copy of the ordinance to parish representatives when advising that a vacancy has occurred, should also circulate a copy of the guidelines.
63. At its meeting on 31 July 2006, the Standing Committee reviewed draft bills for the Nomination Ordinance 2006 and the Nomination (Transitional Provisions) Ordinances 2006 which had been drafted in accordance with the principles set out in paragraph 62 above. As a consequence of the review the Standing Committee made the following changes to the bill for the Nomination Ordinance 2006 –
- (a) reinstating time limits for making presentations, initially 6 months then 3 months for each subsequent presentation (reversing the principle outlined at paragraph 62(h) above), and
 - (b) adding a second declaration to be made by parish nominators that they have attained the age of 21 years and are a communicant member of the Anglican Church of Australia, and
 - (c) extending the time in which the Archbishop may issue a certificate as to the entitlement of a parish to the benefits under the Ordinance from 21 days to 42 days, and

- (d) providing that alternates should act on the Nomination Board in respect of vacancies in parishes which arise before the Standing Committee fills the vacancy on the Board.

64. Standing Committee requested that the amended bills for the Nomination Ordinance 2006 and the Nomination (Transitional Provisions) Ordinance 2006 be promoted to the Synod at its request.

For and on behalf of the Standing Committee

ROBERT WICKS
Diocesan Secretary

18 August 2006