

15/94 Retirement Ages

(A report from the Standing Committee)

Introduction

1. In March 1994 Synod resolved as follows -
"Synod requests the Standing Committee to review the present rules made by the Synod regarding retirement ages and to report thereon to the Synod."
2. This report considers the rules made by the Synod regarding retirement ages for clerical office holders and holders of other offices. It then considers relevant legislation and policy issues relating to retirement ages generally.

Clerical Office Holders

3. In 1964 the Commission appointed by the then Archbishop to survey the administrative organisation, property and finances of the Diocese recommended retirement ages for clerical office holders. Such retirement ages were introduced in 1969.
4. The relevant legislation is now the Retirement Ordinance 1993 which specifies a retirement age of 65 (extendable up to age 70) for each of the following persons -

The Archbishop	Assistant Ministers
The Assistant Bishop	Deaconesses
The Dean	Parish sisters
The Archdeacons	Other persons licensed to officiate under a non-revokable licence
Clerical Canons	
Parochial Ministers	

5. The Retirements Ordinance 1993 does not specify retirement ages for persons who are employees.

Other Diocesan Offices

6. The Diocesan Officers Retirement Ordinance 1987 ("1987 Ordinance") specifies a retirement age of 72 for the holders of certain diocesan offices. The bill for the 1987 Ordinance was promoted by the Standing Committee in response to Synod Resolution 5/86 which was -

"Synod requests the Standing Committee to prepare the necessary ordinances requiring the retirement of all members on reaching the age of 72 years from all committees, councils and corporations etc established by ordinances of Synod, excluding parish councils and church committees."

7. The 1987 Ordinance applies to the office of a member of a board, chapter, committee, corporation, council or other body constituted, controlled or regulated by an ordinance of the Synod or of the Standing Committee, but does not apply to -
 - (a) the office of member of a church committee or parish council;
 - (b) the office of churchwarden;
 - (c) an office to which the Retirements Ordinance 1993 applies; or
 - (d) a member of the Provisional Cathedral Chapter of St John's Parramatta or St Michael's Wollongong who holds office by virtue of being a churchwarden of one of those churches.
8. The 1987 Ordinance specifically provides that to the extent of any inconsistency between the provisions of that ordinance and any other ordinance applying to an office to which the 1987 Ordinance also applies, the provisions of the 1987 Ordinance prevail.

Employees

9. There is no diocesan legislation which specifies retirement ages for employees of parochial units or diocesan organisations. Such legislation would be contrary to both State and Federal legislation.

Anti-Discrimination Act 1977

10. Under part 4E of the Anti-Discrimination Act 1977 it is unlawful for a person -
 - (a) to retire an employee from employment; or
 - (b) to require an employee to retire from employment; or
 - (c) to threaten to retire an employee from employment; or

(d) to engage in conduct with a view to causing an employee to retire from employment, on the ground of the employee's age.

11. The persons subject to the Retirements Ordinance 1993 listed in item 3 and the persons the subject of the Diocesan Officers Retirement Ordinance 1987 are not considered to be employees at general law or for the purpose of part 4E of the Anti-Discrimination Act 1977. Hence the retirement provisions of those ordinances do not infringe part 4E.

Industrial Relations Act 1988

12. Under subdivision B of division 3 of part VIA of the Industrial Relations Act 1988 an employer must not terminate an employee's employment for any one or more of a number of specified reasons. The reasons specified in the relevant section include -

"(f) race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin."

13. The persons subject to the Retirements Ordinance 1993 listed in item 3 and the persons the subject of the Diocesan Officers Retirement Ordinance 1987 are not employees for the purposes of subdivision B of division 3 of part VIA of the Industrial Relations Act 1988. Accordingly, the retirement provisions of those ordinances do not infringe subdivision B of division 3 of part VIA.

Policy Matters

14. More so than in the past, society considers compulsory retirement ages are generally not justifiable, particularly in the work place. Government has taken steps to prohibit compulsory retirement ages and, more generally, discrimination on the basis of age.

15. Part 4E of the Anti-Discrimination Act 1977 was enacted Anti-Discrimination Act in 1990. In his second reading speech to the NSW Parliament the then Minister for Industrial Relations, and Minister for Further Education, Training and Employment said -

"With the ageing of the population it is no longer viable or appropriate to demand that individuals retire at a given age. The effect, and indeed objective, of this legislation will be to remove a major form of discrimination against older workers who wish to continue in employment. The Government believes that decisions on whether a worker should be retained must be based on that worker's ability rather than on age. There is no fairness in saying to people that at an arbitrary point in their lives they are no longer capable members of the work force and then summarily dismissing them. Obviously, those who want to continue to work and are capable of working ought to be able to do so. This legislation therefore promotes a choice for people as to how long they remain in the work force. It can be argued that older, experienced workers contribute much to overall productivity and economic growth, and therefore indirectly increase the overall demand for labour. The Government feels that the nation can ill afford to do without, and in fact desperately needs, a skilled and experienced work force.

The practice of compulsory retirement has been questioned both in Australia and overseas. Specifically, concern has been expressed that the use of age as a substitute for judgement on individual performance is both economically and socially inefficient. Given the ageing of the work force, the appropriateness of compulsory retirement also is under challenge. This has primarily taken place in the context of ageing population trends where, over time, it is expected that increased pressure will be placed on older workers to stay in the work force for longer periods. Negative stereotypes of older workers are common. They include low productivity and inability to cope with physically demanding work. However, studies recently undertaken have disputed this and have found that older workers possess a strong work ethic, are as productive as younger workers, are dependable and responsible employees who have fewer absences, are more stable and have lower turnover rates and fewer on-the-job accidents. The result of a more flexible retirement system is that all workers would be subject to the same laws of supply and demand. Not all older people would be able to get work in a competitive environment; nor would all want full-time work."

16. Some of the matters raised by the Minister are relevant to the issue of compulsory retirement ages for clerical office holders and holders of offices to which the 1987 Ordinance applies. Do all clergy and other office holders etc cease to be capable of holding office when they reach a certain age? Should the retirement system be more flexible to permit capable clergy and other office holders to continue in office?

17. In 1993 the New South Wales Parliament enacted wide-ranging legislation to prohibit age discrimination in a number of specified situations. While the terms of that legislation are not specifically relevant in the present context, the general intent of that legislation should be considered. Paragraph 2.6 of the Attorney-General's

Green Paper on Age Discrimination (May 1992) gives some indication as to the general intent of the legislation -

"Age is often used as a general criteria to determine people's needs or abilities because it is administratively easier to identify than other indicators. Sometimes, age is the most practical and acceptable criteria to apply to people. However, very often it is an inaccurate indicator because it is based on commonly held myths about age, or is inappropriate because not everyone conforms to the general pattern of a particular group. In such cases, people suffer disadvantage because of their age and is it therefore important to ensure that decisions are based on the most legitimate and accurate criteria."

18. There are Acts of Parliament which impose retirement ages. Under the Corporations Law a person of or above the age of 72 years cannot be appointed as a director of a public company or a subsidiary of a public company unless a specified period of notice is given to members of the company and the appointment is approved by at least three-quarters of the members of the company at a general meeting. Then the appointment is only until the next annual general meeting. The rationale for this legislation is evident from the following statement made by the Australian Securities Commission in Policy Statement No.73 in the context of the retirement age of directors -

"It is fundamental to the proper management of public companies and the safeguarding of their members' interest that directors have the capacity to carry out their functions effectively".

19. Under the Judicial Officers Act 1986, a "judicial officer" (an expression which includes a judge of the Supreme Court and a magistrate) must retire at 72 years of age. The policy behind this legislation appears to be similar to that behind compulsory retirement ages for directors of public companies: namely, an important area of public administration (in this case justice) requires that the relevant administrators (judicial officers) have the capacity to carry out their functions effectively and the imposition of an arbitrary retirement age is considered by the legislature as an appropriate means to this end.

20. Synod should consider whether policy requires that clerical office holders and holders of those offices to which the 1987 Ordinance applies be subject to compulsory retirement ages.

Other Issues

21. If Synod is of the view that compulsory retirement ages for clerical office holders should be repealed, there must be workable procedures for the removal of a member of the clergy who is not mentally or physically able to perform his or her duties. Procedures exist under the Incapacity and Inefficiency Ordinance 1906 to remove ministers who are incapable or inefficient but experience suggests that these procedures are slow and expensive and there is reluctance to invoke them. If the clerical officer is so derelict in his duties that an ecclesiastical offence is committed, proceedings can be brought under the Tribunal Ordinance 1962. However proceedings under that ordinance are just as unlikely, if not more so, than proceedings under the 1906 Ordinance.

22. In the case of persons appointed to an office to which the Casual Vacancies Ordinance 1935 applies, the Synod and the Standing Committee have power, by resolution, to declare a vacancy in the office, specifying the person and the reason for making the resolution. If compulsory retirement ages under the 1987 Ordinance were to be removed, the Synod or the Standing Committee could act under the Casual Vacancies Ordinance to declare a vacancy in an office to which that ordinance applies should a person become incapable of continuing to act. Care would need to be taken to ensure that all offices to which the 1987 Ordinance applies are subject to the Casual Vacancies Ordinance.

For and on behalf of the Standing Committee

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Legal Officer

19 July 1994