

Tribunal Ordinance 1962 Amendment Ordinance 1996

Explanatory Statement

Introduction

1. Under the constitution of the Anglican Church of Australia a diocesan tribunal is established with jurisdiction to hear and determine charges against a member of the clergy of breaches of faith, ritual, ceremonial or discipline and of such offences as may be specified by any canon, ordinance or rule.

2. The procedures for the making and hearing of a charge against a member of the clergy are set out in the Tribunal Ordinance 1962 (the "Ordinance"). In brief, the procedure contemplates the making of a charge against the member of the clergy. The member of the clergy the subject of the charge is advised of the charge and, if the charge is not admitted, it is referred to the Board of Enquiry whose function is to determine if the charge is a proper charge to be heard. If so, the matter is then referred to the Diocesan Tribunal for hearing. The Tribunal has power to make certain recommendations to the Archbishop if the member of the clergy is found guilty of the charge.

Removal of Time Limits on the Bringing of Charges

3. Under clause 21 of the Ordinance a charge can only be brought if a complaint is made to the Registrar within 1 year after the occurrence of the events which give rise to the complaint or within 6 months after conviction or after an appeal against conviction has been dealt with. These arbitrary time limits often cannot be justified, particularly in cases of sexual misconduct where the alleged misconduct may only come to light some time after it occurred. The bill for the Tribunal Ordinance 1962 Amendment Ordinance 1996 proposes that the time limits for the bringing of a charge be removed except where the charge relates to a breach of faith, ritual or ceremonial.

4. The bill also proposes amending clause 14 of the Ordinance to give the Board of Enquiry a discretion to find that a charge is not a proper one to be heard if there are circumstances which prevent the respondent from receiving a fair trial before the Tribunal. Clause 20 of the Ordinance is to be amended to give the Tribunal power to dismiss a charge on similar grounds.

5. Clause 3 of the bill states that the amendments will apply to conduct whether occurring before or after the date being 1 year before the date on which it receives assent. The intention is that the amendments will have retrospective effect: conduct (other than breaches of faith, ritual or ceremonial) which cannot now be the subject of a charge because of the time limits in clause 21 of the Ordinance will be able to support a charge if the bill is passed.

6. Legal advice has been received to the effect that the Synod has power to enact a bill which will have retrospective effect in the manner proposed on the basis that the bill does not interfere with any "vested rights" referred to in the 3rd of the 1902 Constitutions. The correctness of this legal advice has been questioned.

7. Relevant extracts from the Ordinance are set out in the Annexure.

Recommendation

8. The Standing Committee recommends that the Synod pass the bill as an ordinance.

For and on behalf of the Standing Committee

MARK PAYNE

Legal Officer

2 September 1996

Annexure

Extracts from the Tribunal Ordinance 1962

Report of the Board of Enquiry

14. If a majority of the Board of Enquiry shall report in writing that they are of the opinion that a prima facie case has been made out against the Respondent the Registrar shall forward the report and all papers connected therewith to the Chancellor. But if the Board or a majority thereof are of opinion that a prima facie case has not been made out they shall report in writing giving their reasons that they are of opinion that the Charge is not a proper one to be heard and a copy of such report shall be forwarded by the Registrar to the parties interested and no further proceedings shall be taken on such Charge.

Recommendation of the Tribunal

20. (i) If in any case on hearing of a charge a majority of the Tribunal shall find the Respondent guilty it shall so report to the Archbishop and make such recommendation as it thinks just in the circumstances but shall not recommend any sentence other than one or more of the following that is to say, monition, suspension from office, expulsion from office, deprivation of rights and emoluments appertaining to office, deposition from Holy Orders. The Archbishop shall give effect to the recommendation provided that he may, if any sentence is recommended, consult with the Tribunal and in the exercise of his prerogative of mercy -

- (a) mitigate the sentence or
- (b) suspend its operation or
- (c) mitigate the sentence and suspend its operation.

In each case he shall pronounce the sentence recommended even though he mitigate or suspend it. Provided that if the operation of a

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sentence or mitigated sentence has been suspended and remains suspended for a period of two years such sentence shall thereafter have no operation.

(ii) If upon the hearing of any matter the members of the Tribunal are equally divided the matter shall be reheard at the request of either party. If the Archbishop presided at the hearing the Deputy President shall preside at the rehearing and if the Deputy President presided the Archbishop shall, if he does not himself preside, appoint some other than the Deputy President to act as deputy president for the purpose only of such rehearing. The members who heard the matter shall be deemed to have vacated their seats for the purpose only of such rehearing.

Time Limits on Bringing Charges

21. No charge shall be entertained under or in pursuance of this Ordinance against any person for or in respect of any offence committed or alleged to have been committed by such person unless such complaint shall have been sent to the Registrar within one year after the commission of the alleged offence. Provided always that whenever such complaint shall be made against a person in respect of any offence for which a conviction shall have been obtained against him in any court of competent jurisdiction such complaint may be entertained if the complaint shall have been sent to the Registrar any time within six calendar months after such conviction or if an appeal has been lodged against such conviction after the date upon which such appeal is finally dealt with although more than one year shall have elapsed since the commission of the offence in respect of which such charge shall be made.