

Tribunal Ordinance 1962

(Reprinted under the Interpretation Ordinance 1985.)

The Tribunal Ordinance 1962 as amended by the Tribunal Amendment Ordinance 1971, the Membership of Committees Ordinance (No 2) 1975, the Diocesan Officers (Retirement) Ordinance 1987, Tribunal Ordinance 1962 Amendment Ordinance 1996 and the Diocesan Officers (Retirement) Repeal Ordinance 2001.

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Long Title

An Ordinance to provide for the establishment of a Diocesan Tribunal under and in accordance with the constitution of the Church of England in Australia; for the repeal of the Tribunal Ordinance 1904 as amended and for other purposes.

The Synod of the Diocese of Sydney ordains and rules as follows -

1. Repeal of 1904 Ordinance

The Tribunal Ordinance 1904 as amended is hereby repealed.

2. Diocesan Tribunal

(1) There shall be a Diocesan Tribunal consisting of a President who shall be the Archbishop or a Deputy President appointed by him and five other members as hereinafter provided.

(2) Immediately after the passing of this ordinance and hereafter at the first Session of every Synod two clergymen and three lay persons shall be elected as members of the said Tribunal by Synod voting collectively. Such members shall hold office until the election of their respective successors by a subsequent Synod. Provided that a member who has entered upon the consideration of any matter shall continue to be a member of the Tribunal until the matter is concluded notwithstanding that his successor may have been appointed.

(3) The Tribunal may hear and determine matters arising under this Ordinance although all the members thereof be not present at such hearing or determination provided that there be present at least two members one of whom is a clergyman and one of whom is a lay person in addition to the President or Deputy President. And provided further that if during the hearing of any matter a member attending the Tribunal should die or become unable to continue with the hearing the matter may proceed so long as the President or Deputy President and two members as aforesaid be present provided further that should the Tribunal be evenly divided on any question of evidence or procedure the President shall have a casting as well as a deliberative vote.

(4) The Synod shall also at the time of such election as aforesaid elect two clergymen and three lay persons whose names shall be placed on a supplemental list for clerical and lay members of the Board.

(5) The appointment by the Archbishop of a Deputy President of the Tribunal shall be by writing under seal and shall be lodged with the Registrar: such appointment shall, unless specified therein to be with respect only to the hearing of a particular charge or for a limited period, operate until revoked by writing under seal.

(6) A vacancy on the Tribunal shall occur -

- (i) when a member thereof
 - (a) dies
 - (b) resigns
 - (c) is declared by a competent court incapable of managing his affairs
 - (d) ceases to reside permanently in the Diocese; or
 - (e) . . .
- (ii) when Standing Committee by resolution declares the seat of a member to be vacated by reason of his refusal neglect or inability to perform his duties as a member or for such other reason therein stated.

(7) In the event of a vacancy occurring in the elected members of the Tribunal such vacancy shall be filled in the case of a clergyman from the clergymen on the supplemental list, and in the case of a lay person from the lay persons on the supplemental list in the order in which the names of the persons elected appear on such supplemental list: Provided that if there is no name remaining on the supplemental list available for appointment the vacancy shall be filled by the Standing Committee by the appointment of a clergyman or a lay person as the case may be.

(8) An elected member of the Tribunal shall be disqualified from hearing any charge which concerns himself or to the prosecution of which charge he has been a party.

(9) . . .

3. Jurisdiction of the Diocesan Tribunal

The Tribunal shall in respect of a person licensed by the Archbishop or any other person in Holy Orders resident in the Diocese have jurisdiction to hear and determine charges of -

- (a) Breaches of faith ritual ceremonial or discipline.
- (b) Such other offences as are specified in the "Offences Ordinance 1962" or any other ordinance repealing or amending the same.

4. Who may Promote a Charge

A person appointed by the Archbishop or any five adult communicant members of this Church resident within the Diocese may promote a charge before the Tribunal provided that if the charge be preferred against an incumbent of a Parish with respect to an offence alleged to have been committed with that Parish the aforesaid communicants shall be bona fide Parishioners of that Parish.

5. Reference to the Board of Enquiry

Before any charge including a charge relating to faith ritual or ceremonial be heard by the Tribunal it shall be referred to a Board of Enquiry appointed as hereinafter provided and the Tribunal may proceed to a hearing of the said charge if the said Board allows it to be a charge proper to be heard.

6. Appeal to Appellate Tribunal

In matters involving any question of faith ritual ceremonial or discipline and in any other matter an appeal shall lie from the determination of the Tribunal to the Appellate Tribunal in accordance with the provisions of chapter IX of the Constitution and of the "Tribunals Procedure Canon 1962" or of any canon repealing or amending the same and applicable to this diocese.

7. Board of Enquiry

(1) Immediately after the passing of this Ordinance and thereafter at the first session of every Synod a Board of Enquiry shall be constituted in manner following namely, there shall be two clergymen one of whom shall be nominated by the Archbishop and the other elected by the Synod voting collectively together with three lay persons one of whom shall be nominated by the Archbishop and the others shall be elected by the Synod voting collectively. No member of such Board of Enquiry shall be eligible to sit on the Tribunal. The Synod shall also at the time of such election aforesaid elect two clergymen and four lay persons whose names shall be placed upon a supplemental list for the Board of Enquiry.

(2) The members of the Board of Enquiry shall hold office until the first session of the next ensuing Synod. A vacancy on the Board shall occur-

- (i) when a member thereof -
 - (a) dies,
 - (b) resigns,
 - (c) is declared by a competent court incapable of managing his affairs,

- (d) ceases to reside permanently in the Diocese, or
 - (e) . . .
- (ii) when Standing Committee by resolution declares the seat of a member to be vacated by reason of his refusal neglect or inability to perform the duties of his office or for such other reason therein stated.

In the event of a vacancy occurring in the members of the Board such vacancy shall be filled by the Archbishop if the person whose seat has become vacant was appointed by him and from the supplemental list of clergymen or lay persons as the case may be in the order in which the names of the persons elected appear on such supplemental list if the person whose seat has become vacant was elected by Synod. Provided that if there is no name remaining on the supplemental list available for appointment the vacancy shall be filled by the Standing Committee by the appointment of a clergyman or a lay person as the case may be. Any person appointed as aforesaid shall hold office as a member of the Board until the next ensuing session of Synod. Provided that a member who has entered upon the consideration of any matter shall continue to be a member of the Board until the matter is concluded notwithstanding that his successor may have been appointed.

A member of the Board shall be disqualified from considering any charge which concerns himself or to the promotion of which he is a party and in such case another person shall be appointed either by the Archbishop or from the supplemental list as the case may be as a member of the Board for the purpose of only of hearing the said charge.

8. Form of Charge etc

A charge under this Ordinance shall be in the form of Schedule A or of Schedule B or as near thereto as may be and shall be in triplicate and signed by the person or persons promoting the said charge as the case may be setting forth the particulars of such charge and shall be lodged at the Diocesan Registry together with the sum of ten pounds to be used by the Registrar towards defraying the costs or expenses of the said charge. The Registrar shall keep an account thereof and shall refund the balance if any to the persons promoting the charge. Provided that if the charge shall come before the Tribunal as hereinafter provided the said sum shall be held by the Registrar subject to the order and disposal of the Tribunal.

9. Service of Charge and Answer to Charge

The Registrar shall within seven days after the receipt of such statement of the Charge send to the Respondent addressed to him in a registered letter through the Post Office at his last known place of abode a copy of such statement of the Charge having endorsed thereon a request that the Respondent will file in triplicate with the Registrar an answer thereto within a time to be specified in such request but not less than twenty one days from the date upon which the letter would in the ordinary course of posting be received. Provided however should service in the manner provided herein not be effected service will be deemed to have been effected if the said statement shall be left at the Respondent's last known address. One of the triplicates when filed shall forthwith be sent by the registrar to the person or persons making the charge. The Registrar may from time to time extend the time specified for such answer although the time originally specified or the extended time may have elapsed.

10. Admission of Charge

If the Respondent shall admit the charge and thereupon submit himself without any further proceedings to judgement and sentence as the Archbishop shall think fit to pronounce the Archbishop shall deal with the case accordingly.

11. Where Charge is not Admitted etc

If the Respondent shall not within the time specified under Clause 9 or any extension thereof admit the charge and submit himself to judgement and sentence under Clause 10 the Registrar shall at the expiration of such time or any extension thereof convene a meeting of the Board of Enquiry and submit to them such statement of the Charge, and the answer thereto if any.

12. Board of Enquiry may Require Statutory Declaration

The Board of Enquiry may in any matter before them require the person or persons making the charge to furnish statutory declarations in support of the statement of the Charge and may allow the Respondent to support his answer thereto in like manner.

13. Amendment of the Charge

The Board of Enquiry may permit or direct any amendment of the statement of the Charge and of the answer thereto an any time before reporting thereon and notice of any such amendment having been made shall forthwith be sent by the Registrar to the opposite party.

14. Report of the Board of Enquiry

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 and there are no circumstances which prevent the Respondent from receiving a fair trial before the Tribunal 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 or that there are circumstances which prevent the Respondent from receiving a fair trial before the Tribunal 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.

15. Promotion of Charge by Archbishop's Appointee

The Archbishop of his own motion may direct the person appointed by him to promote a charge to exhibit a statement of charge before the Chancellor against any person licensed by the Archbishop or any other person in Holy Orders resident in the Diocese.

The appointment by the Archbishop of a person who may promote a charge before the Tribunal shall be by writing under seal and shall be lodged with the Registrar: such appointment shall unless specified therein to be with respect only to the promotion of one particular charge or for a limited period operate until revoked by writing under seal.

16. Suspension of Clergyman Pending Determination of the Charge

Upon the exhibiting of a statement of charge as aforesaid or upon receipt by the Chancellor of such report the Archbishop may with the concurrence of Standing Committee suspend such person from the duties of his office until the determination of the charge and may make such arrangements for the performances of the duties of the office as the Archbishop may deem proper.

17. Citation of Respondent by Chancellor

Upon the exhibiting of a statement of charge as aforesaid or upon the receipt by the Chancellor of such report the Chancellor shall cite the Respondent to appear on a day not less than thirty days from the date of the service of such citation before the Tribunal sending with such citation a copy of the statement of charge and the Chancellor shall appoint a time and place for the trial and shall twenty one days at the least before such trial give to the Respondent and to the person or persons as the case may be promoting the charge notice of such time and place. Provided that the Chancellor shall have power at any time to alter the place or the time for the trial or for the continuation thereof on the application of either of the parties on giving to each of the parties three days' notice at least of such alteration.

18. Tribunal deemed to be an Arbitrator

For the purpose of securing the attendance of witnesses and the production of documents and for the examination of witnesses on oath or otherwise the Tribunal shall be deemed to be an arbitrator within the meaning of the Arbitration Act 1902-1957 and shall have power to administer an oath to, or take an affirmation from, a witness, and for the same purpose any party to a proceeding before the Tribunal or any person permitted by the Tribunal to submit any evidence to it shall be deemed to be a party to a reference or submission to arbitration within the meaning of the said Act.

19. Charge may be heard in Respondent's Absence

If in any case the Respondent shall refuse or neglect to appear before the Tribunal either in person or by Counsel or Solicitor in obedience to the citation so issued and served upon him as hereinbefore provided the Tribunal may proceed to hear the charge in his absence.

20. Recommendation of the Tribunal

(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 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.

(iii) The Tribunal may dismiss a charge if it is of the opinion that there are circumstances which prevent the Respondent from receiving a fair trial.

21. Time Limits on Bringing Charges

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 which involves a breach of faith, ritual or ceremonial unless such complaint shall have been sent to the Registrar within one year after the commission of the alleged offence.

22. Hearings before Tribunal to be Public

The hearing of any charge under this Ordinance for any offence shall be open to the public provided that the President at any stage of the proceedings may order that the proceedings or any part of thereof shall be held in private by reason of their subject matter or the misconduct of any member of the audience or for any other reason which the President may in his absolute discretion think fit and he shall so order upon the request of two other members of the Tribunal.

23. Advocate

An officer to be styled "The Advocate of the Diocese" who shall be a Barrister or Solicitor of not less than seven years' standing shall from time to time be appointed by the Standing Committee of the Synod for a period of not exceeding five years. The Advocate of the Diocese shall saving as next hereinafter provided have the conduct of charges before the Tribunal under this Ordinance. During his term of office he shall be liable to be removed from office by a vote of two-thirds majority at the least of the whole number of members of the Standing Committee. The Complainants and Respondent shall be at liberty respectively to prosecute and defend any charge in person or they or either of them may be represented at any stage by Counsel or Solicitor. Provided however that if the Complainants shall seven days at least before the time fixed for the trial deliver to the Registrar a written request that a charge may be prosecuted by the Advocate the prosecution of the complaint shall thenceforth be carried on by the Advocate. The person holding the office of Advocate at the time of the passing of this Ordinance shall continue in such office under and subject to this Ordinance until the expiration of his term of office when he shall be eligible for re-appointment.

24. Rules for Tribunal Business

The Archbishop the Chancellor and the Advocate of the Diocese may from time to time make and alter rules for the conduct of the business of the Tribunal and all such rules shall be laid before the Synod at its next ensuing session.

25. Custody and Control of Documents

The Registrar shall have the custody and control of all documents in every case and either party to the cause shall on giving reasonable notice and paying the specified charges and fees be entitled to obtain inspection or a copy of all or any such documents in any case after the Board of Enquiry shall have reported that a prima facie case has been made out.

26. Powers of Standing Committee

Whenever under this Ordinance any act required to be done by Synod or by the clerical members of the Synod or the lay representatives of the Synod becomes necessary to be done when the Synod is not sitting such act may be done by the Standing Committee and shall endure until the next ensuing session of Synod.

27. Interpretation

(1) In this Ordinance unless the context or subject matter otherwise indicates -

"Archbishop" means the Archbishop of the Diocese of Sydney and includes the person for the time being exercising the powers of such Archbishop under clause twenty-six of the Schedule to the Church of England Constitutions Act Amendment Act of 1902.

"Complainants" means the person or persons promoting a charge against any clergyman.

"Respondent" means any Clergyman against whom a Charge has been made.

"Chancellor" means the Chancellor of the Diocese appointed by the Archbishop and includes the person holding the office of Chancellor at the time of the passing of this Ordinance or in the event of a vacancy in the office or of his being unable or unwilling to act some person to be appointed by the Archbishop to perform the duties assigned to the Chancellor by this Ordinance.

"Registrar" means the Registrar of the Diocese or the person for the time being performing his duties.

"Deputy President" means the Deputy President appointed by the Archbishop or in the event of a vacancy in the office or of his being unable or unwilling to act some person to be appointed by the Archbishop to perform the duties assigned to the Deputy President by this Ordinance.

Words importing the masculine gender include the feminine gender.

(2) Section 74 of the Constitution shall apply to this Ordinance unless the context or subject matter thereof indicates the contrary.

28. Citation

This Ordinance may be cited as the "Tribunal Ordinance 1962-1975"

