

ANGLICAN CHURCH OF AUSTRALIA
DIOCESE OF WILLOCHRA



REGULATION SIX
DISCIPLINE

Adopted May 1999

The Diocesan Tribunal

1. In accordance with chapter IX of the Constitution of the Anglican Church of Australia, there shall be a Diocesan Tribunal established as set out hereafter to hear and determine charges of breaches of faith ritual ceremonial or discipline and of such other offences as specified by regulation.
2. The Diocesan Tribunal shall consist of the President or Deputy President, as the case may be, and one priest and one layperson selected from the Panel of Assessors in the manner prescribed by Clause 18 of this Regulation. The panel shall be elected by Synod in accordance with Regulation 1.18.

Panel of Assessors

3. (1) The Panel of Assessors shall consist of
 - (a) five clergy who have been in priests' orders for a period of not less than five years and
 - (b) five laypersons who are either lay members of synod or who are qualified to be elected as lay members of synod.
- (2) Within one month of election each assessor shall sign the declaration contained in Schedule "M". Should any assessor fail to sign the declaration as required the position shall be declared vacant and shall be filled at the next sitting of Synod.

Powers of the Diocesan Tribunal

4. The Diocesan Tribunal in addition to the powers conferred on it by section 54 (2) of the Constitution of The Anglican Church of Australia and any canon of the General Synod of The Anglican Church of Australia may hear and determine charges made in respect of the breach of any provision of the Constitution or of any Regulation alleged to have been committed by any cleric holding the licence of the Bishop or by any person in Holy Orders resident in the Diocese, or of conduct unbecoming the office and work of a priest or deacon, or of racial abuse or harassment, or of sexual abuse or harassment, and shall have such other powers as the Synod shall by regulation determine.

The Promotion of Charges

5. Subject to the provisions of section 54 of the Constitution of The Anglican Church of Australia a charge in respect of any matter over which the Diocesan Tribunal has jurisdiction may be promoted by a person appointed by the Bishop in accordance with the Rules of the General Synod of The Anglican Church of Australia relating to charges against a cleric or by any five adult communicants resident within the Diocese.

The Charge

6. (1) A charge shall be in writing in the form contained in Schedule "K" or in a form of like effect and shall
 - (a) be addressed to the Bishop
 - (b) contain a statement of the facts alleged to constitute the offence
 - (c) contain the names of witnesses (if any) proposed to be called in support of such facts
 - (d) be accompanied by copies of any documents relevant to the charge
- (2) The charge shall be lodged in triplicate with the Registrar at the Church Office.
- (3) The charge shall be deemed to have been made when it is lodged with the Registrar at the Church Office.
- (4) Upon lodgement of the charge the Bishop shall refer the charge to a Board of Enquiry constituted as hereinafter provided.
- (5) The Registrar shall forward a copy of the charge to the respondent who shall be requested to submit a response within one month to the Registrar who shall forward it to the relevant Board of Enquiry.

The Board of Enquiry

7. (1) The Bishop shall within one month of the lodgement of the charge appoint a Board of Enquiry.
 - (2) The Board of Enquiry shall consist of two clergy (one of whom shall preside) and one lay member of Synod, provided that no member of the Panel of Assessors shall be eligible for appointment to the Board of Enquiry.
8. The Board of Enquiry shall remain in office until it has reported in accordance with the provisions of clause 12 hereof and shall be deemed to be a board of enquiry for the purposes of section 54 of the Constitution of The Anglican Church of Australia.

Procedure for the Board of Enquiry

- 9.(1) The Chair of the Board of Enquiry shall convene a meeting or meetings of the Board and shall submit to the board the charge, the accompanying documents (if any) and the respondent's response. The Board may call for such other documents or signed statements of witnesses as it thinks fit and may require any or all of the witnesses to give an undertaking in the form of Schedule "L".

- 9.(2) The Board of Enquiry shall have power to amend any charge in the light of the information placed before it, but if it determines to amend the charge (or permits the complainant or complainants to amend the charge) it shall advise the respondent of the amended charge and permit the respondent an opportunity to respond to the amended charge.
10. The proceedings of the Board of Enquiry shall be in camera.
11. The decision of the Board of Enquiry shall be that of the majority.

The Report of the Board of Enquiry

12. The Board shall report in writing to the Bishop whether in its opinion there is or there is not a charge proper to be heard by the Diocesan Tribunal and the findings shall be entered in the Bishop's Register.
13. If the Board believes there is no charge to be heard the Bishop shall forthwith dismiss the charge and shall inform the person or persons making the charge and the respondent accordingly.
14. If the Board believes that there is a charge proper to be heard by the Diocesan Tribunal, the report of the Board shall
- (a) identify the charge (whether it be the original charge or an amended charge or a charge arising out of the consideration of the material brought before the Board of Enquiry).
 - (b) set out the material that it considered in reaching its determination.
15. The Board shall also forward to the Bishop all documents and signed statements of witnesses, transcripts of proceedings and any other matters considered by the Board in reaching its determination.
16. Upon receipt of a report from the Board of Enquiry that there is a proper charge to be heard, the Bishop shall convene a Diocesan Tribunal as set out hereunder.

Meeting for Selection of Diocesan Tribunal

17. The Registrar shall by notice in writing served upon the person or persons making the charge and on the respondent appoint a time and place for the selection of members of the Diocesan Tribunal and such parties or their duly appointed representatives shall be entitled to attend the selection of such members.

Presidency of the Diocesan Tribunal

18. (1) In the case of a charge made by a person appointed by the Bishop the Diocesan Tribunal shall comprise a Deputy President appointed by the Bishop and one priest and one layperson to be selected from the Panel of Assessors in the manner hereinafter provided.
- (2) In the case of any other hearing the Diocesan Tribunal shall comprise the Bishop as President or a Deputy President appointed by the Bishop and one priest and one layperson to be selected from the Panel of Assessors in manner hereinafter provided.

Selection of Members of the Diocesan Tribunal

19. The selection of members of the Diocesan Tribunal shall be made in the following manner :
- (a) The Bishop shall strike off from the Panel of Assessors the name of any member who is a person making the charge, a witness named in the charge, the respondent, a person who for the purposes of the hearing has been appointed Deputy President of the Diocesan Tribunal by the Bishop, or the name of any other member whom the person(s) making the charge and the respondent jointly agree for whatever reason should be struck from the Panel of Assessors.
- (b) The names of the remaining clerical members of the Panel of Assessors written on separate pieces of paper shall then be placed in a box and shaken and the Registrar shall draw out one piece of paper and the person named thereon shall be the clerical member of the Diocesan Tribunal.
- (c) The lay member of the Diocesan Tribunal shall be selected in like manner from the names of the remaining lay members of the Panel of Assessors.
- (d) (i) Should the Bishop so decide a second name shall be drawn in the same manner as set out in Clauses 19 (b) and 19 (c). The persons whose names are drawn second shall act as reserves to the persons whose names were drawn first. The reserve members shall sit with the members of the Diocesan Tribunal and hear the evidence but shall not participate in the deliberations of the Diocesan Tribunal unless either of the selected members is, for any reason, unable to continue to fulfil the duties as a member of the Diocesan Tribunal. In such case the appropriate reserve member shall take the place of the incapacitated member and shall thereafter continue as a member of the Diocesan Tribunal.

- 19 (d) (ii) Should the President or Deputy President (as the case may be) of the Diocesan Tribunal be unable to continue to fulfil the duties as a member of the Diocesan tribunal the President shall select one of the two remaining members to preside and the appropriate reserve shall take the place of the member chosen to preside.

Hearing of Charge

20. The President of the Tribunal shall appoint a time and place for the hearing of the charge and shall cause notice thereof to be served on the person or persons making the charge and on the respondent.
21. At the first hearing the respondent shall be asked whether the charge is admitted in whole or in part. If the respondent denies the charge in whole or in part the Diocesan Tribunal shall proceed to hear and determine the charge.

Procedure for a Hearing by the Diocesan Tribunal

22. The hearing before the Diocesan Tribunal shall be in camera provided however that the Tribunal may, and on the application of the respondent shall, direct that the hearing be in public.
23. At the hearing the person or persons making the charge and the respondent may at his or her or their own cost appear by counsel solicitor or agent provided however that where a charge is made by a person appointed by the Bishop the cost of this representation shall be a diocesan expense and provided also that if the charge shall be not proved the Diocesan Tribunal may order the payment to the respondent of such costs as it shall determine and any such costs shall be a diocesan expense.
24. (1) Except as specifically provided in this Regulation the Diocesan Tribunal may hear and determine the charge in such manner in all respects as the Diocesan Tribunal in its discretion thinks best suited for that purpose and may admit as evidence matter that is not in law admissible where in equity and good conscience it considers that such matter should be so admitted.

- 24 (2) The Diocesan Tribunal shall have power generally to give all such directions including directions of an interlocutory nature and to do all such things as it deems necessary or expedient in the proceedings and without in any way limiting the foregoing may give directions upon such terms (if any) as it considers expedient relating to the trial of separate issues, the joinder of charges, the amendment of the charge or response, discovery and inspection of documents, examination of witnesses and the place, time and mode of hearing.
25. The Diocesan Tribunal may proceed to hear and determine the charge or enquire into the circumstances of an offence in the absence of any party thereto and may dismiss a charge or refrain from further hearing or from determining the matter if it appears that such matter is trivial or that in the public interest further proceedings by the Diocesan Tribunal are not necessary or desirable.
26. The Diocesan Tribunal shall cause a transcript to be produced of all its proceedings.
27. In the exercise of any powers under the provisions of this Regulation the Bishop and the Diocesan Tribunal may seek legal advice and assistance and for that purpose the legal advisor so consulted may sit with and take part in the proceedings of the Diocesan Tribunal.
28. The decision of the Diocesan Tribunal shall be that of the majority.
29. The Diocesan Tribunal shall report in writing to the Bishop

Procedure where the charge is admitted

30. In respect of any charge or any portion thereof which has been admitted by the respondent the Diocesan Tribunal shall make such enquiries into the circumstances of the offence as it deems necessary.

Findings and Sentence

31. If the Tribunal finds the charge proved whether following a hearing or by admission it shall make such recommendation as to sentence in accordance with the provisions of section 60 of the Constitution of the Anglican Church of Australia as it thinks just in the circumstances.

32. The Bishop as soon as practicable after the Diocesan Tribunal shall have made its findings shall pronounce the sentence (if required) and the respondent shall thereupon be served with a copy thereof under the hand and seal of the Bishop.

Appeal

33. Subject to the provisions of the Constitution of The Anglican Church of Australia there shall not be any appeal for mere error or defect in form in any proceeding verdict or sentence.

34. Subject to the provisions of clause 33 of this Regulation an appeal shall lie from every determination of the Diocesan Tribunal to the Appellate Tribunal of The Anglican Church of Australia.

Costs

35. The reasonable costs and expenses of members of the Diocesan Tribunal shall be paid by the Synod in such amounts as the Diocesan Council shall determine.

Other

36. Any notice or other document required to be served to the respondent or the person or persons making the charge shall be delivered personally or by certified mail. If sent by certified mail such notice or document shall be addressed to the last known address in South Australia of each of the persons or to such other address as nominated in writing by each or any of the persons. In the case of the Bishop or Registrar, service shall be effected by leaving the same at, or by posting the same in manner aforesaid to, the Church Office. The date of service of any document shall in the case of personal service be the date on which it is delivered and in the case of service by post shall be the date upon which in the normal course of post the document would have been received by the person served.

37. If the time limited for any purpose mentioned in this Regulation shall expire on a Saturday, Sunday or public holiday, such time shall be deemed to be extended to the next business day.

38. The Bishop shall have the power to adjourn the proceedings of the Board of Enquiry or the Diocesan Tribunal for specified reasons for a specified time.