

The Anglican Church of Australia

DIOCESE OF RIVERINA

DIOCESAN TRIBUNAL ORDINANCE 2018

No 7 of 2018

Preamble

AN ORDINANCE to establish procedures for addressing complaints before the Diocesan Tribunal; for resolving differences between clergy and their parish, or between clergy and the bishop, and for other purposes.

The Synod of the Diocese of Riverina ordains:

Title:

1. This Ordinance is the *Diocesan Tribunal Ordinance 2018*.

Repeal:

2. The *Ministry and Tribunal Ordinance 2000* as amended shall be and hereby is repealed.

Interpretation:

3. In this Ordinance, unless the contrary intention appears:

“Alternative Dispute Resolution” means a process that follows the common dispute resolution process as outlined from time to time by the Attorney General’s Department <ag.gov.au>.

"Appropriate officers" means two of the Churchwardens of a Parish, and the Chair and Secretary of the Board or committee of an Anglican school or organisation whether or not the school or organisation is an incorporated body;

"Archdeacon" means a person appointed by the Bishop with responsibility for a particular Member the Clergy, Parish, organisation or school, unless an issue or complaint involves the archdeacon when it shall be construed to mean the Bishop who will appoint another suitable person to undertake the responsibility of the archdeacon for the purposes of this Ordinance;

“Complaints” under the Diocesan Tribunal Ordinance means those complaints made in relation to offences outlined under clause 1 of the *Offences Canon 1962* as amended from time to time. Notwithstanding sexually related complaints which may be dealt with administratively under the Diocese’ Professional Standards Ordinance.

"Constitution" means the Constitution of the Anglican Church of Australia;

"Diocesan Tribunal" means the Tribunal prescribed by the Constitution;

"governing body" means the Parish Council or the Board or committee of an Anglican school or organisation, whether or not the school or organisation is an incorporated body;

“legal practitioner” means a person who is or has been at any time a judge, magistrate, solicitor, or barrister of any state or territory in Australia for more than five years;

"mediation" means a process of conciliation involving a person acceptable to all the parties concerned who facilitates discussions with the parties with the aim of reaching a mutually acceptable outcome;

"Member of the Clergy" means a person in holy orders, licensed by or holding authority for the Bishop;

"office" means the position to which a Member of the Clergy has been appointed and does not mean the order to which a person has been made, ordained or consecrated;

"Panel Chair" means a lay person elected under Clause 5 of this Ordinance;

"relevant body" means a Parish or an Anglican school or Anglican organisation;

"secular court or tribunal" means any court or tribunal or Commission established under State or Federal law.

4. Diocesan Tribunal:

- a) The procedures at schedule 1 shall be used as described in that Schedule for dealing with matters before the Diocesan Tribunal.
- b) Eligible matters for the Diocesan Tribunal are outlined in clause 1a of Schedule 1.
- c) Sexually related matters are to be dealt with under the Diocese' Professional Standards Ordinance 2018.
- d) For the purposes of Diocesan Tribunal procedures, The Synod shall, from it's members, elect a panel of three (3) members of the Clergy and three (3) laypeople.
- e) The Diocesan Tribunal shall consist of a President who shall be the Bishop, or a Deputy President appointed by the Bishop and one clerical member and one lay members appointed by the Bishop from the panel elected under clause 8(b).
- f) The Diocesan Tribunal shall have, in respect of a person licenced by or holding authority from the Bishop or any other person in holy orders resident in the Diocese, jurisdiction to hear and determine charges of breaches of faith, ritual, ceremonial or discipline and of such offences as may be specified by any canon, ordinance, or rule.
- g) The Diocesan Council may enter into such agreements or arrangements as it sees fit with the relevant authority of another diocese as to the terms on which the powers and functions of the equivalent bodies or persons of that diocese are to be exercised by the persons holding office in or as delegates of the Diocesan Tribunal, or by the members or the secretary of the Board.

Sentences:

5.

- a) Without Prejudice to the Bishop's prerogative of mercy, the sentences available to the Diocesan Tribunal or to the Bishop for the purpose of the Diocesan Tribunal procedures shall be limited to those prescribed by the constitution.
- b) After hearing and determining a matter referred to it in respect of a Complaint other than a sexually related Complaint, the Tribunal may recommend to the Bishop;
 - i. one or more of the following sentences, namely, monition, suspension from office, expulsion from office, deprivation of rights and emoluments appertaining to office, or deposition from holy orders; or
 - ii. any other matter which the Board considers appropriate,

Official Records:

6. (a) Appropriate records will be kept in the official file of the Member of the Clergy in relation to matters dealt with by the procedures in Schedule 1 of this Ordinance, in accordance with any policy of the Diocesan Council.
- (b) Appropriate records of the proceedings of Panels, Boards and Tribunals will be deposited in the Diocesan Registry, and they will remain confidential and will not be released unless so required by law, ordinance or canon.

Suspension:

7. (a) It shall be competent for the Bishop to suspend any Member of the Clergy from office at any time after receiving a complaint under Schedule 1.
- (b) A Member of the Clergy suspended in accordance with the preceding sub-section shall receive full stipend, allowances and rent-free use of the Rectory or other suitable accommodation for a period of three months and thereafter at the discretion of the Bishop with the concurrence of the Diocesan Council.

Natural Justice:

8. The Bishop and any tribunal, panel or board acting in accordance with this Ordinance shall not be bound by the rules of evidence and may seek information in any way considered appropriate provided always that the rules of natural justice are observed.

Secular Courts and Tribunals:

9. The Bishop and any tribunal, panel or board acting in accordance with this Ordinance may rely on findings of a secular court or tribunal.

Ex-gratia Payments to Clergy when the Term of Office is Terminated:

10. The term of office of a Member of the Clergy will not be terminated under the procedures for matters under clause 1B of Schedule 1 without fair and reasonable provision being determined.

Criminal Offences or Allegations:

11. Should the Bishop acting in accordance with this Ordinance believe that a matter warrants criminal investigation or is required to be reported, the Bishop will advise all relevant authorities including the police and will assist those authorities to investigate such offence or allegation.

Determinations and Sentences should state effect on Stipends and Allowances:

12. when the Bishop passes sentence or makes a determination in accordance with this Ordinance, in the sentence or determination the Bishop shall state when provision of any stipend, allowance or housing is to cease.

Vacancies in Elected Positions:

13. A vacancy shall occur in a position elected in accordance with this Ordinance if the elected person:
 - (a) dies;
 - (b) is absent without leave from the Diocese for six months;
 - (c) goes to reside permanently outside the diocese;
 - (d) becomes incapacitated by age or infirmity;
 - (e) in the case of clergy, retires;
 - (f) resigns.
14. (a) Where a vacancy occurs in a position elected in accordance with this Ordinance, an appointment will be made by the Diocesan Council to fill the vacancy.

- (b) The Diocesan Council shall be the sole judge of whether a vacancy has arisen.

No Person to Sit in Relation to Own Cause:

15.

- a) No Member of the Clergy or lay person will by virtue of appointment or election to the Diocesan Tribunal be entitled to make a determination on any matter to which they have been a party or in which they have been involved prior to the hearing, or in which they have declared an interest.
- (b) Where such a conflict arises and the procedures of this Ordinance are not sufficient to address the conflict, it shall be reported to the Diocesan Council who will make a determination. Such determination shall be final.

Confidentiality:

16. Wherever it is practical and just, the Bishop, the Diocesan Tribunal will seek to preserve confidentiality.

Application of Ordinance:

17. The procedures in Schedule 1 will apply to all Members of the Clergy provided that if a Member of the Clergy holds office in an Anglican school or with an incorporated Anglican organisation, no action shall be taken that contravenes the laws applying to, or the constitution of, or the rules of, that organisation.

No Contract of Employment or for Services:

18. Nothing in this Ordinance shall be construed as implying employment or a contract for services.

Indemnity

19. The Synod indemnifies each of the members of the Tribunal for any act or omission by the member in good faith and in the exercise of or purported exercise of powers or functions, or in the discharge or purported discharge of duties under this Ordinance.

Appeals

20.

- a) The Chancellor, the Complainant or the Respondent may appeal from a Decision of the Tribunal to recommend any action to a Church Authority or an order to the Provincial Tribunal, except in cases in respect of a Complaint laid in respect of a Special Complaint in which case the appeal lies to the Appellate Tribunal;
- b) An appeal shall be commenced by lodging with the Provincial Registrar or the Registrar of the Appellate Tribunal as the case may be, a Notice of Appeal which sets out the name of the appellant and the respondent, the finding or recommendation from which the appeal challenges and the grounds of the appeal;
- c) If an appeal has been instituted from a decision of the Tribunal the Church Authority shall not act on a recommendation until the appeal has been determined;
- d) Any appeal under this section must be lodged within 28 days of the date on which the Order of the Tribunal is received by the Church Authority, Complainant or Respondent as the case may be, or any additional time granted by the Provincial Tribunal or the Appellate Tribunal as the case may be.

Alternate Appeal

20.A

- a) If there is no Provincial Tribunal or if there are no or insufficient members appointed to it to enable it to carry out its functions, the Provincial Registrar shall, upon receipt of a Notice of Appeal under subsection 49(2), refer the Notice to the Metropolitan who shall deal with it as follows.

- b) Upon referral under subsection (1), the Metropolitan shall appoint a person (**the reviewer**) to hear and determine the appeal.
- c) The reviewer shall be a person who is or has been a judge of the High Court of Australia, of a Supreme Court of a State or Territory, of the Federal Court of Australia or of the Family Court of Australia or a barrister who has been appointed as Senior Counsel and, in each case, who is a member of this Church.
- d) The reviewer shall conduct the appeal as a rehearing and may give such directions and conduct the appeal in such way as he or she considers, subject to the rules of natural justice, necessary or desirable for a fair and expeditious determination of the appeal.
- e) The Diocese shall bear the costs of the reviewer in undertaking the appeal.
- f) If the reviewer upholds the appeal, then the recommendation of the reviewer shall be dealt with under this Ordinance as if it were a recommendation of the Board.

SCHEDULE 1

Diocesan Tribunal

Complaints:

1. (a) Eligible complaints made against a member of the Clergy or a person to whom this Ordinance applies must be made to the Diocesan Bishop. The Bishop may require the complaint to be in writing.

(b) Matters inconsistent with the above 1.a) will be dealt with using the relevant grievance procedure/protocol or using a grievance process consistent with best practise alternative dispute resolution.
2. The Bishop shall investigate the complaint as the Bishop sees fit and may;
 - (a) take no formal action;
 - (b) issue a rebuke or warning;
 - (c)
 - (1) refer the parties for mediation or engage in a process under clause 1b;
 - (2) invoke the Professional Standards Ordinance 2018 for sexually related complaints;
 - (d) institute processes that may result in a sitting of the Diocesan Tribunal; and/or
 - (e) refer the matter to the police or other appropriate authorities.

No Formal Action:

3. Where the Bishop is of a view that a complaint is unfounded, vexatious or based on a misunderstanding, the Bishop may decide to take no further action. Where possible, the complainant will be advised of the Bishop's decision. The Member of the Clergy will be notified of the complaint and the decision, but no entry will be made in the official file of the Member of the Clergy.

Rebuke or Warning:

4. If the Bishop decides that the complaint is based on a misjudgement or a minimal departure from expected standards by the Member of the Clergy, the Bishop will discuss the matter with the Member of the Clergy. The Member of the Clergy and the Bishop may be accompanied by a person of his or her own choosing. The Bishop then may, if appropriate, issue a rebuke or warning to the Member of the Clergy. Where possible, the Bishop will notify the complainant of this action. A record of a rebuke or warning will be entered in the official file of the Member of the Clergy.

Mediation:

5. The Bishop may refer the parties for mediation at any stage when the Bishop considers that the matter may be resolved in this manner. The Bishop may also instigate a process using best practise Alternative Dispute Resolution.

Processes that may lead to a Sitting of the Diocesan Tribunal:

6. (a) Where the Bishop believes that the complaint warrants formal action and that no other procedure is available or appropriate, the Bishop, after consultation with the Diocesan Chancellor, will appoint a Member of the Clergy and one other person (clerical or lay) as Assessors to be a Board of Enquiry.
 - (b) The Bishop will advise the Member of the Clergy of the complaint and the appointment of the Assessors.
 - (c) The Assessors will investigate the complaint and may inform themselves of the matters in question in such manner as they see fit, but shall give the Member of the Clergy an opportunity to be heard.

- (d) Any affected party, including the Bishop, may be represented by a person of that party's own choosing at any hearing conducted by the Assessors.
- (e) The Assessors will provide a written report to the Bishop and advise whether or not there are sufficient grounds for a charge to be heard by the Diocesan Tribunal.
- (f) If recommended by the Assessors, the Bishop will convene the Diocesan Tribunal to determine the charge or implement another suitable procedure as detailed in Clause 2 of this Schedule.

The Diocesan Tribunal:

- 7. (a) The Diocesan Tribunal will, after reference to all parties, decide whether the proceedings will be held in camera.
- (b) The Bishop will appoint legal counsel to have conduct of the charges before the Tribunal. All parties may be legally represented at the hearing of the Tribunal.
- (c) The Tribunal will ensure that all parties have an opportunity to be heard.
- (d) At the conclusion of the hearing, the Tribunal will make a recommendation to the Bishop.
- (e) Prior to pronouncing sentence, the Bishop may receive representations from all parties.

Appeal:

- 8. Appeals with respect to a matter dealt with under the Diocesan Tribunal may be made under the procedures outlined in clauses 20 and 20A of this Ordinance.

Costs:

- 9. The Diocesan Tribunal will determine costs.

We certify that this Ordinance was passed by the Synod of the Diocese of Riverina on this 16th Day of June 2018.

Secretaries of Synod

I assent to this Ordinance

Bishop of Riverina
16 June 2018