
DIOCESAN TRIBUNAL ACT

(Replacing the Ecclesiastical Offences Act 1950)

No. 14, 1993

AN ACT

TO PROVIDE FOR THE ESTABLISHMENT OF A DIOCESAN TRIBUNAL
UNDER AND IN ACCORDANCE WITH THE CONSTITUTION OF
THE ANGLICAN CHURCH OF AUSTRALIA.

Amended: Act No. 8, 1998
Act No. 2, 2006

BE it enacted by the Bishop the clergy and the Laity of the Anglican church of Australia within the Diocese of Wangaratta duly met in Synod according to law as follows:

Title
Amended:
Act No. 8, 1998
Act No. 2, 2006

Diocesan Tribunal

1. This Act may be cited as the Diocesan Tribunal Act 1993 - 2006.

Election of
Members
of Tribunal

2. There shall be a Diocesan Tribunal consisting of a President who shall be the Bishop or a Deputy President appointed by him (who may be the Chancellor) and four other members resident in the diocese two of whom shall be clerks in Holy Orders of not less than ten years' standing and licensed in the Diocese and two of whom shall be of the laity of whom at least one shall if possible have practised as a barrister or solicitor for not less than ten years and who shall be communicant members of this Church.

Supplemental Lists

3. Synod at its Ordinary Session to be held in the year 1994 shall and thereafter each Synod at its first Ordinary Session shall elect as members of the Tribunal two Clerks and two members of the laity of the standing aforesaid who 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 elected.

Quorum

4. The Synod shall also at the time of such election as aforesaid elect two Clerks and two members of the laity of the standing aforesaid whose names shall be placed on supplemental lists for members of the Tribunal.

5. The Tribunal may hear and determine matters arising under this Act although all the members thereof be not present at such hearing or determination provided that there be present at least one Clerk and at least one member of the laity in addition to the President or Deputy President. And provided further that if during the hearing of any matter any 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 one member as aforesaid be present. Should the Tribunal be evenly divided on any question of evidence or procedure the President or Deputy President shall have a casting as well as a deliberative vote.

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Appointment of
Deputy
President

6. The appointment by the Bishop 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.

Vacancies

7. A vacancy on the Tribunal shall occur
- a. when a member thereof
 - i. dies
 - ii. resigns
 - iii. is declared by a competent court incapable of managing his affairs
 - iv. ceases to reside permanently in the Diocese
 - v. being a clerical member, ceases to be licensed in the Diocese;

or

 - b. when Synod 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 some other reason therein stated.

Filling of Vacancies

8. In the event of a vacancy occurring in the elected members of the Tribunal such vacancy shall be filled from the appropriate supplemental list in the order in which the names of the persons elected appear on such supplemental list; provided that if there is a vacancy in a supplemental list it shall be filled pursuant to the Regulation of Elections Act 1911-1993.

Member of Tribunal

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

Jurisdiction,
Offences
Amended:
Act No. 8, 1998

10. The Tribunal shall have jurisdiction in respect of a person who at the time the charge is preferred is licensed by the Bishop or of any other person in Holy Orders resident in the Diocese to hear and determine charges of:-
- a. Breach of faith ritual ceremonial or discipline
 - b. Unchastity
 - c. Drunkenness
 - d. Habitual and wilful neglect of ministerial duty after special admonition in writing by the Bishop with reference thereto
 - e. Insolvency bankruptcy or failure or disability to pay just debts without sufficient excuse for such insolvency bankruptcy failure or disability
 - f. Conviction of a criminal offence being sinful in itself

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Amended: Act No. 8, 1998	g.	Conduct whenever occurring <ul style="list-style-type: none"> (i) which would be disgraceful if committed by a member of the clergy, and (ii) which at the time the charge is preferred is productive or if known publicly would be productive, of scandal or evil report.
Deeming Jurisdiction Inserted Act No. 2, 2006	10A	The Tribunal shall also have and always be deemed to have had jurisdiction to hear a charge relating to an offence of unchastity, an offence involving sexual misconduct or an offence relating to a conviction for a criminal offence that is punishable by imprisonment for twelve months or upwards in respect of a member of clergy if : <ul style="list-style-type: none"> (a) the act of the member of clergy which gave rise to the charge occurred in the diocese; (b) the member of clergy was licensed by the Bishop or was resident in the diocese within two years before the charge was laid; or (c) the member of clergy is in prison as a convicted person at the time the charge was laid, but within two years before such imprisonment was licensed by the Bishop or was ordinarily resident therein.
Promotion of Charge	11.	A person appointed by the Bishop 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 within that Parish the aforesaid communicants shall be Parishioners of that Parish. Subject to the provisions of this section and of section 12 the Bishop 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 Bishop or any other person in Holy Orders resident in the Diocese. <p style="margin-left: 40px;">The appointment by the Bishop 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.</p>
Reference to Board of Enquiry	12.	Before any charge 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.
Right of Appeal	13.	In all matters including matters involving any question of faith ritual ceremonial or discipline 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 "Appellate Tribunal Procedure Canon 1962" or of any canon repealing or amending the same and applicable to this Diocese.
Board of Enquiry	14.	The Board of Enquiry referred to in Section 12 shall consist of three Clerks in Holy Orders of not less than ten years' standing resident and licensed in the Diocese other than any Assistant Bishop or the elected members of the Tribunal or those whose names are on the supplemental list.

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The members of such Board of Enquiry shall be elected by the Council of the Diocese from time to time as the case may require and shall hold office until the date of the next ensuing election of members of the Tribunal. Any member may resign and on his refusal or inability to act his place on such Board shall be vacated. 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 by the Council of the Diocese for the purpose only of dealing with the said charge.

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| | <p>15. A statement of charge under this Act shall be in the form of Schedule A, Schedule B, Schedule C or a s near thereto as may be and shall be in duplicate 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 Bishop's Registry together with the sum of One Hundred Dollars 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.</p> |
| <p>Procedure on
Receipt of Charge.
Respondent's
Answer</p> | <p>16. 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 should file in duplicate 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.</p> |
| <p>Admission
of Charge</p> | <p>17. If the Respondent shall admit the charge and agree to submit himself without any further proceedings to judgment and sentence as the Bishop shall think fit to pronounce the Bishop may deal with the case accordingly, otherwise the case shall proceed in accordance with the subsequent provisions of this Act.</p> |
| <p>Submission to
Board of Enquiry</p> | <p>18. If the Respondent shall not within the time specified under Section 16 or any extension thereof admit the charge and submit himself to judgment and sentence under Section 17 or denies the charge or the Bishop declines to deal with the case under Section 17 hereof 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 the statement of the charge, and the answer thereto if any.</p> |
| <p>Statutory
Declarations</p> | <p>19. 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 by such person or persons or third persons and may allow the Respondent to support his answer thereto in like manner.</p> |
| <p>Amendment of
Charge or Answer
thereto.</p> | <p>20. The Board of Enquiry may permit or direct any amendment of the statement of the charge and of the answer thereto at 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.</p> |

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Report by
Board
of Enquiry

21. 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 that the charge is one proper to be heard the Registrar shall forward the report and all papers connected therewith to the Chancellor. But if the Board or a majority thereof are of the opinion that a prima facie case has not been made out or that the charge is not one proper to be heard they shall report in writing that they are of the opinion that the charge should not be heard by the Tribunal 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.

Suspension
from Duty until
Determination
of Charge

22. (a) Where a charge has been promoted before the Tribunal against any person licensed by the Bishop, the Bishop with the concurrence of the Council of the Diocese may suspend such person from the duties of his office until the determination of the charge or for some lesser time, and may make such arrangements for the performance of the duties of the office as may be authorised by any Act of Synod or in the absence of such Act as the Bishop may deem proper.

Amended:
Act No. 2, 2006

- (b) The Bishop may suspend a person licensed by him or any other person in holy orders resident in the Diocese ("the person to be suspended") from the duties of his office where –
- (i) the Bishop or some other person or persons pursuant to Section 11 intends to promote a charge against the person to be suspended (other than a charge alleging breach of faith, ritual or ceremonial); and
 - (ii) the charge relates to an offence against a law of the Commonwealth of Australia or of a State or Territory therein that is punishable by a penalty of 12 months' imprisonment or more where :
 - (1) the trial of the offence of the person to be suspended is pending in a court of competent jurisdiction; or
 - (2) the person to be suspended has been convicted of the offence by a court of competent jurisdiction; or
 - (3) the Bishop has received a report from a lay person qualified to be a member of the Appellate Tribunal stating that there is a prima facie case that the person to be suspended has committed the offence.
- (c) Suspension under subsection (b) must be by notice in writing signed by the Bishop, served on the person to be suspended, stating –
- (i) the intention of the Bishop or any other person or persons authorised by Act of Synod to promote the charge;
 - (ii) the conduct complained of; and
 - (iii) the period of suspension.
- (d) The period of suspension is not to exceed 28 days from the date of service of the notice referred to in subsection (c).

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(e) Where -

- (i) a person has been suspended under subsection (b);
- (ii) the period of suspension has expired; and
- (iii) a charge has not been promoted during the period of suspension,

it shall not be open to the Bishop to suspend the person further under subsection (b) in relation to the conduct specified in the notice referred to in subsection (c).

- (f) If during the period of suspension referred to in subsection (b) the Bishop or other authorised person or persons promotes the charge the suspension of the person shall continue until the first meeting of the Bishop in Council and thereafter with the concurrence of the Bishop in Council.
- (g) The Bishop may revoke the suspension of a person suspended by him under this Section and may do so at any time during the period of suspension.
- (h) Suspension of a person from the duties of office under this Section does not deprive that person of the emoluments appertaining to that office.
- (i) A notice under subsection (b)(i) may be given to the person to be suspended:
 - (i) in person; or
 - (ii) by sending it by registered post to that person at his address last known to the Registrar of the Diocese.
- (j) A notice under subsection (b)(i) is taken to have been given to the person to be suspended :
 - (i) in the case of delivery in person - at the time of delivery;
 - (ii) in the case of posting - 2 business days after the day on which the document was posted.
- (k) In this Section :

“business day” means a day other than -

 - (i) a Saturday or Sunday; or
 - (ii) a public holiday in the place to where the notice is sent or delivered.

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Appointment of
Time and Place
of Hearing

23. Upon receipt by the Chancellor of a report under Section 21 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 together with such other papers as are required pursuant to Section 24 hereof 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.

Application of
Arbitration Act
of 1958

Amended:
Act No. 2, 2006

24. (a) 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 1958 and a statement of charge made in accordance with this Act shall be deemed to be a submission to arbitration within the meaning of the said Arbitration Act and the Tribunal shall have power to administer an oath to or to 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.
- (b) In any proceeding before the Tribunal, the Tribunal shall admit as evidence that a person charged has been convicted of an offence, and proof of such conviction shall be evidence of the facts giving rise to such conviction. This provision shall not apply if such conviction has been quashed or set aside or in respect of it a pardon has been given.
- (c) In any proceedings before the Tribunal, the transcript of any criminal proceedings in which the member of the clergy the subject of a charge before the Tribunal was a party shall be admitted as evidence in the same way as if the persons whose evidence appears in the transcript had given evidence in person before the Tribunal. Provided that, the Tribunal may exclude the whole or any part of such evidence should it consider that admission of the same would be likely to cause a serious injustice to the member of clergy charged.

Refusal to Appear

25. If in any case the Respondent shall refuse or neglect to appear before the Tribunal either in person or by counsel or by 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.

Sentence
Amended:
Act No. 2, 2006

- 26 (a) If in any case on the hearing of a charge a majority of the Tribunal shall find the Respondent guilty it shall so report to the Bishop and make to the Bishop such recommendation as it thinks just in the circumstances but shall not recommend any sentence other than one or more of the following :
- (i) deposition from orders;
 - (ii) prohibition from functioning;
 - (iii) removal from office;
 - (iv) rebuke.

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- (b) The Bishop shall give effect to the recommendation in subsection (a), provided that if any sentence is recommended, he may consult with the Tribunal and in the exercise of his prerogative of mercy
- (i) mitigate the sentence or
 - (ii) suspend its operation or
 - (iii) 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.

- (c) Where a person has been found guilty of an offence by the Tribunal in the exercise of its jurisdiction under Section 10A, the Bishop shall consult as to penalty with the bishop of the diocese by whom the person is licensed or in which the person resides at the time of the finding and no penalty may be imposed to which the latter bishop does not express concurrence.

Re-hearing

27. If upon the hearing of any matter the members of the Tribunal are equally divided the matter shall be re-heard at the request of either party. If the Bishop presided at the hearing the Deputy President shall preside at the re-hearing and if the Deputy President presided the Bishop shall, if he does not himself preside, appoint some person other than the Deputy President to act as deputy president for the purpose only of such re-hearing. The members who heard the matter shall be deemed to have vacated their seats for the purpose only of such re-hearing, and their places shall be filled for such re-hearing in accordance with the provisions of Section 8 hereof.

Limitation of
Time for Making
of Charge

Amended:
Act No. 2, 2006

28. No charge shall be entertained under or in pursuance of this Act against any person for or in respect of any offence committed or alleged to have been committed by such a person unless a statement of such charge shall have been sent to the Registrar within one year after the commission of the alleged offence save and except for an alleged offence pursuant to paragraph (g) of Section 10. Provided always that whenever such charge 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 charge may be entertained if the statement and charge shall have been sent to the Registrar at 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.

Private Hearing

29. The hearing of any charge under this Act for any offence shall be in private provided that the Tribunal may and on the application of the person charged shall direct the hearing to be in public.

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Appointment
of Advocate.
Legal
representation

30. For the proper direction and conduct of all inquiries under this Act the Bishop shall appoint an officer to be styled the Advocate of the Diocese (hereinafter referred to as “the Advocate”) and shall have power to remove him from his office. The person who at the time of the coming into operation of this Act is the Advocate of the Diocese shall continue to be the Advocate under and subject to this Act. 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 fourteen days at least before the time fixed for the trial deliver to the Registrar a written request that a charge be prosecuted by the Advocate the prosecution of the charge shall thenceforth be carried on by the Advocate who shall be entitled to the assistance of Counsel if he so desires.

Rules

31. The Bishop the chancellor and the Advocate 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. Provided always that in the absence of any rule to the contrary the Tribunal may regulate its proceedings in such manner as it deems advisable and may give such directions to the parties before it as it is of the opinion may be necessary for proper adjudication on any charge before it.

Costs

32. The Tribunal may make orders for the payment of costs of the parties before it.

Allowance
towards
Expenses

33. The Bishop in Council may on the application of any clerk against whom proceedings under this Act are then pending or have been concluded make such allowance to him as it shall think fit towards the expenses which he may have incurred or may incur in connection with such proceedings.

Custody of
Documents

34. 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 and that the charge is one proper to be heard.

Definitions

35. In this Act unless the context or subject matter otherwise indicates:

“Bishop” means the bishop of the Diocese of Wangaratta and includes the person for the time being exercising the powers of such Bishop.

“Complainants” means the person or persons promoting a charge against any Clerk in Holy Orders.

“Respondent” means any Clerk in Holy Orders against whom a charge has been made.

“Chancellor” means the Chancellor of the Diocese constituted and appointed by the Bishop and includes the person holding the office of Chancellor at the time of the passing of this Act or in the event of a vacancy in the office or his being unable or unwilling to act some

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person to be appointed by the Bishop to perform the duties assigned to the Chancellor by this Act.

“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 Bishop or in the event of a vacancy in the office or of his being unable or unwilling to act some person be appointed by the Bishop to perform the duties assigned to the Deputy President by this Act.

“Constitution” means the Constitution of the Anglican Church of Australia.

Definitions under Constitution

36. Section 74 of the Constitution shall apply to this Act unless the context or subject matter thereof indicates the contrary.

First Tribunal

37. Until the first election shall have been held under this Act the members of the Tribunal (other than the President or Deputy President) shall be the Committee of Reference under the Ecclesiastical Offences Act, No. 5, 1950, elected by the Synod of the Diocese at its Ordinary Session held in the year 1992.

Repeal of Ecclesiastical Offences Act, No. 5, 1950

38. The Ecclesiastical Offences Act, No 5, 1950 is hereby repealed except as to any operation already affected by or act done under the said Act or as to any right title obligation or liability already acquired or accrued under the said Act.

SCHEDULE A

Statement of Charge by a person Appointed by the Bishop

I, A.B. of do declare that I am a person duly appointed by the Bishop under the provisions of section 11 of the Diocesan Tribunal Act 1993 and I do hereby charge the Reverend C.D. of being a person licensed by the Bishop of Wangaratta (or being a person in Holy Orders resident in the Diocese of Wangaratta) that he/she has committed the following offence (set out particulars)

On which charge I desire that the said C.D. be brought to trial and I the said A.B. do solemnly and sincerely declare that I do not make this charge from any private ill-will towards the same C.D. or with any view to my own profit and I further declare in like manner that I believe the charge laid to be substantially true.

Dated the day of

Signed: A.B.

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SCHEDULE B

Statement of Charge by Church Members

We, A.B. of C.D. of
E.F. of G.H. of and I.J.
of do hereby severally declare that we are adult
communicant members of the Anglican Church of Australia resident within the
Diocese of Wangaratta and we do hereby charge the Reverend K.L. of
..... being a person licensed by the Bishop of Wangaratta (or
being a person in Holy Orders resident in the Diocese of Wangaratta) that he/she has
committed the following offence (set out particulars).

On which charge we desire that the said K.L. be brought to trial and we the said A.B.,
C.D., E.F., G.H., and I.J., do solemnly and sincerely severally declare that we do not
make this charge from any private ill-will towards the said K.L. or with any view to our
own profit and we further declare in like manner that we severally believe the charge
laid to be substantially true.

Dated the day of

Signed: A.B.
 C.D.
 E.F.
 G.H.
 I.J.

SCHEDULE C

Statement of Charge against an Incumbent of a Parish by Parishioners

We, A.B. of C.D. of
E.F. of G.H. of and I.J. of
..... do hereby severally declare that we are adult
communicant members of the Anglican Church of Australia resident within the
Diocese of Wangaratta and parishioners in the Parish of in
the said Diocese and we do hereby charge the Reverend K.L. of
..... incumbent of the said Parish in the said Diocese that he
has committed the following offence (set out particulars).

On which charge we desire that the said K.L. be brought to trial and we the said A.B.,
C.D., E.F., G.H., and I.J., do solemnly and sincerely severally declare that we do not
make this charge from any private ill-will towards the said K.L. or with any view to our
own profit and we further declare in like manner that we severally believe the charge
laid to be substantially true.

Dated the day of

Signed: A.B.
 C.D.
 E.F.
 G.H.
 I.J.

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Passed: 28th August 1993
Assented to: 15th September 1993

Amended by Act No. 8, 1998

Passed: 2nd October 1998
Assented to: 23rd October 1998

Amended by Act No. 2, 2006

Passed: 21st April 2006
Assented to: 10th May 2006