

# Parish Disputes Ordinance 1999

(Reprinted under the Interpretation Ordinance 1985.)

The Parish Disputes Ordinance 1999 as amended by the Miscellaneous Amendments Ordinance 2001.

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### Long Title

An Ordinance to adopt a procedure to resolve disputes between a minister and his parish.

### Preamble

The Synod of the Diocese of Sydney Ordains -

### Name of Ordinance

1. This Ordinance is the Parish Disputes Ordinance 1999.

### Adoption of the Dispute Resolution Procedure

2. A dispute resolution procedure to resolve disputes between a minister and his parish, the text of which is set out in the schedule, is adopted.

### Synod Pool

3. (1) As soon as possible after the commencement of this Ordinance, the Standing Committee shall elect the members of the Synod Pool who, subject to subclause (3), shall hold office until the first day of the 2nd ordinary session of the 45th Synod. The members of the Synod Pool may be provided with training in the areas of reconciliation and dispute resolution as determined by Standing Committee to enable them to perform their duties as members of a Reconciliation Panel or Advisory Panel.

(2) At the 2nd ordinary session of each Synod, the Synod shall elect the members of the Synod Pool who, subject to subclause (3), shall hold office until the first day of the 2nd ordinary session of the next Synod.

(3) A member of the Synod Pool shall hold office until the second session of the next Synod. A vacancy on the Synod Pool shall occur -

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

(4) The terms of the Casual Vacancies Ordinance 1935 shall apply to the filling of casual vacancies.

### **Amendment of the Church Administration Ordinance 1990**

4. The Church Administration Ordinance 1990 is amended as follows - in clause 9 an additional subclause 9(6) is inserted -

"The Archbishop may direct the minister and churchwardens to convene a vestry meeting to consider any recommendation of the Advisory Panel established by the Parish Disputes Ordinance 1999 and the regional bishop or other person directed by the Archbishop will chair this vestry meeting".

### **Schedule**

A procedure to resolve disputes between a minister and his parish.

### **Part I Preliminary**

#### **Definitions**

1. (1) In this Ordinance the specified words have the following meanings -

**"Alternate"**

In the context of membership of a Reconciliation or Advisory Panel, "Alternate" means a person who is available to interchange with their respective appointed clergyman or layperson. The interchange occurs if the person appointed to the Panel is unavailable and agrees to the interchange (in which case the "Alternate" can be terminated by the appointed person at any time), or the appointed person's position in the Synod pool is declared vacant under subclause 3(3) of this Ordinance. The "Alternate" must be drawn from the Synod Pool and carries the same rights and obligations as the appointed member.

**"Advisory Panel"**

The Advisory Panel constituted under clause 18.

**"Dispute"**

A disagreement between a minister and the parish council and/or one or more parishioners notwithstanding that it may be dealt with under the Incapacity Ordinance, the Tribunal Ordinance, the Offences Ordinance 1962 or Part 9 of the Church Administration Ordinance 1990.

**"Incapacity Ordinance"**

The Incapacity and Inefficiency Ordinance 1906 or any ordinance which replaces that ordinance.

**"Laypersons"**

- (a) the majority of the members of the parish council who notified a regional bishop of a dispute under subclause 6(1); or
- (b) the 12 or more persons who notified a regional bishop of a dispute under subclause 6(2); or
- (c) both (a) and (b), if both have notified a regional bishop of the same dispute; or
- (d) the parishioners as determined by the regional bishop under clause 7A,

as the case may require, together with any parishioners as determined by the regional bishop under subclause 6(7).

**"Minister"**

- (a) in relation to a provisional parish, the person licensed thereto for the time being as curate-in-charge;
- (b) in relation to a parish, the person licensed thereto as incumbent; and
- (c) in the absence or incapacity of a person referred to in paragraph (a) or (b) or during any vacancy in office of the curate-in-charge or incumbent, the person authorised under clause 59 of the Church Administration Ordinance 1990 for the time being to exercise all or any of the functions of the curate-in-charge or incumbent, to the extent to which those functions are properly exercisable in accordance with his licence or other authority.

**"Parishioner"**

Has the meaning attributed to that word in the Church Administration Ordinance 1990.

**"Party or Parties"**

The minister and the Laypersons.

**"Reconciliation Panel"**

The Reconciliation Panel constituted under clause 9.

“Regional Bishop”

- (a) the regional bishop responsible for the oversight of the parish, or his delegate; or
- (b) the Archbishop, if the Archbishop has notified the regional bishop and the parties that he shall exercise any or all of the functions of the regional bishop in this Ordinance.

“Synod Pool”

A group of twelve clergy, at least nine of whom are to be incumbents, (elected by the clerical members of Synod) and twelve laypersons (elected by the lay members of Synod) as provided for in clause 3 of this Ordinance.

“Tribunal Ordinance”

The Tribunal Ordinance 1962 or any ordinance which replaces that ordinance.

- (2) If one or more persons, being Laypersons, -
  - (a) notify the regional bishop that they wish to withdraw from the dispute; or
  - (b) by their conduct, may be regarded as having withdrawn from the dispute, as are so regarded by the regional bishop,

the Laypersons, thereafter, means those persons who are Laypersons and in relation to whom paragraphs (a) and (b) do not apply.

### **Purpose and approach**

2. This is a set of guidelines for resolving disputes between a minister and Laypersons. It is intended that disputes will firstly be dealt with by the parish using internal pastoral processes. Resort should only be had to these procedures when the internal pastoral procedures and resources of the parish fail to resolve a dispute.

3. Recognising that reconciliation is commanded of us by God, the objective of this procedure is to develop a resolution of a dispute in a manner which provides for continuity of Gospel ministry and restores relationships and thereby achieves reconciliation.

3A. The intent of these procedures is that at all levels - parish, regional bishop, Reconciliation Panel and Advisory Panel - the principles of non-adversarial dispute resolution, mediation and reconciliation will be prayerfully, flexibly and persistently applied to the resolution of the dispute with a view to restoring relationships rather than relying on, determining or enforcing rights.

4. There are three levels of extra parochial dispute management. These will involve:

- (a) Notification to and consultation with the regional bishop (Part II)
- (b) The Reconciliation Panel (Part III)
- (c) The Advisory Panel (Part IV).

4A. A Reconciliation Panel or an Advisory Panel may determine, pending it reaching a conclusion, that an action taken, not taken, proposed to be taken or proposed to be not taken has given rise to a dispute notified under clause 6. Where a Reconciliation Panel or an Advisory Panel makes such a determination, it may give such directions as it considers appropriate to preserve the situation which existed before the dispute arose or the events which have given rise to the dispute occurred. Such directions may be varied. All such directions are binding.

### **Suspension of Proceedings**

4B. If -

- (a) a charge is preferred against a minister under the Tribunal Ordinance; or
- (b) proceedings are instituted against a minister under the Incapacity Ordinance;

and the Chancellor is of the opinion that the charge or proceedings relate to a dispute referred to a Reconciliation Panel or an Advisory Panel, all proceedings under this Ordinance must be suspended until that charge or those proceedings have been disposed of or cease, if, in the opinion of the Chancellor, the proceedings under this Ordinance are not appropriate in the circumstances.

## **Part II Recognition and Verification of a Dispute**

### **Recognition**

5. Parishioners are encouraged to bring concerns initially to the minister and the parish council with a view to resolution of disputes within the parish. If the internal parish processes do not resolve a dispute then the regional bishop may be consulted as set out in this Part.

### **Notification**

6. (1) A dispute may be notified to the regional bishop by the minister or a majority of the members of the parish council or by parishioners.

(2) It is competent for the regional bishop to accept notification of a dispute if petitioned by twelve or more persons who declare themselves to be parishioners notwithstanding he has not been notified by either the minister or a majority of the members of the parish council.

(3) In determining whether the persons referred to in subclause 6(2) are parishioners the regional bishop is to have regard to the definition in clause 2(1) of the Church Administration Ordinance 1990.

- (4) Notification must -
  - (a) be in writing and must contain a statement by the party or parties notifying the dispute that they are prepared to engage in the reconciliation processes of the Ordinance in good faith; and
  - (b) outline the nature and extent of the matters in dispute.
- (5) The regional bishop must acknowledge in writing a dispute notification normally within two weeks.
- (6) The Archbishop may, on application from one of the notifying parties or the regional bishop or at his own discretion, appoint another bishop to act on behalf of the regional bishop under the procedures of this Ordinance. The Archbishop may change this appointment from time to time and may specify that the appointment is restricted to certain procedures under the Ordinance.
- (7) The regional bishop may, at his own discretion at any time after he has acknowledged a dispute notification under this clause, declare that one or more further parishioners are added as parties to the dispute.

### **Verification**

- 7. (1) The regional bishop must, having met with the parties involved, at his absolute discretion determine -
  - (a) to take no further action;
  - (b) that the dispute is of such a character that he encourages the parties to seek resolution and does not refer the matter to a Reconciliation Panel; or
  - (c) to refer the matter to a Reconciliation Panel.
- (2) In making his determination under subclause 7(1) the regional bishop may have regard to -
  - (a) the internal parish pastoral action already undertaken;
  - (b) any previous consultation with the regional bishop;
  - (c) the response of the parties to the consultation;
  - (d) the nature and subject of the dispute including the regional bishop's assessment as to the real or underlying cause or causes of the dispute;
  - (e) his assessment as to the probabilities of further consultation with him resulting in a resolution of the dispute;
  - (f) his pastoral judgment as to the best interests of the parties, the parish and the ministry of the Church;
  - (g) any other matter which he considers relevant.

7A. If a regional bishop takes the view that a dispute exists in a parish that, had it been properly notified to him under clause 6, he would have referred to a Reconciliation Panel, the regional bishop may, after due consultation, refer the matter to a Reconciliation Panel. In these circumstances the regional bishop must nominate the Laypersons involved in the dispute with the minister.

## **Part III Reconciliation Panel**

### **Appointment**

8. A Reconciliation Panel is called by a regional bishop.

### **Composition**

- 9. (1) Subject to subclause 9(4), a Reconciliation Panel consists of 2 persons being -
    - (a) one lay person from the Synod Pool nominated by the Laypersons (an Alternate may also be nominated from the Synod Pool); and
    - (b) one member of the clergy from the Synod Pool nominated by the minister (an Alternate may also be nominated from the Synod Pool).
  - (2) If the Laypersons or the minister fail to nominate a member of the Panel within 14 days after a written request by the regional bishop to do so, the regional bishop shall make the nomination instead of the party in default.
  - (3) If the dispute was notified by Laypersons (or the regional bishop) a minister's nomination of a member of the Synod Pool to a Reconciliation Panel shall include a written statement that he is prepared to engage in the reconciliation processes of the Ordinance in good faith.
  - (4) If the dispute was notified by the minister (or the regional bishop) the Laypersons' nomination of a member of the Synod Pool to a Reconciliation Panel shall include a written statement that they are prepared to engage in the reconciliation processes of the Ordinance in good faith.
  - (5) The regional bishop shall appoint one of the two persons to be the convenor of meetings of the Reconciliation Panel.
  - (6) If the parties agree, the Reconciliation Panel shall consist of one person from the Synod Pool nominated by them.
10. A parishioner of a church in the parish is not eligible to be a member of the Reconciliation Panel.

## **Objectives**

11. To achieve reconciliation in a way which expresses biblical values including -
- (a) prayerfully working together so that we glorify the God and Father of our Lord Jesus Christ;
  - (b) appealing to all to look not only to their own interests but to the interests of others; and
  - (c) finding a way forward whereby the parties may agree to differ but will work together in love being one in spirit and purpose.

## **Role**

12. A Reconciliation Panel will convene meetings of the parties in dispute and may -
- (a) seek advice from additional persons including, but not limited to, the Archbishop or a regional bishop and invite any such persons to meet with the Panel; and
  - (b) use parish property, other than the rectory, for meetings as required.

## **Meetings**

13. Meetings between the Reconciliation Panel and each party will be confidential between the Reconciliation Panel and the parties and be conducted in the following manner-
- (a) informal, in that formal evidence will not be taken;
  - (b) free of legal representation;
  - (c) held with each party individually, with the parties only joining when, and if, the Reconciliation Panel believes it is appropriate;
  - (d) not subject to minutes but the Reconciliation Panel may keep a record of meetings held and agreed outcomes;
  - (e) except where the Reconciliation Panel consists of 1 person under subclause 9(6), a quorum will be the full Reconciliation Panel, that is, the clergy member and the lay member; and
  - (f) open and close with prayer.

## **Outcomes**

14. The Reconciliation Panel may reach a range of conclusions.
- (a) The parties may agree to undertake specific actions (or not undertake, as appropriate) and review the position at some time in the future.
  - (b) The parties may not agree, but accept that complete agreement is not necessary.
  - (c) The dispute may be fully resolved to everyone's satisfaction.
  - (d) There may be no resolution achievable under this process.

## **Completion**

15. In the event that a pause or lengthy delay is decided as an appropriate approach to the dispute, the Reconciliation Panel remains in place and authorised to call additional meetings as it sees fit.
16. A Reconciliation Panel remains convened, notwithstanding that the terms of the Reconciliation Panel as members of the Synod Pool have expired, until -
- (a) the Reconciliation Panel advises the regional bishop that the parties are reconciled and the dispute is resolved;
  - (b) the Reconciliation Panel advises the regional bishop that the reconciliation process is unlikely to produce an outcome acceptable to all parties;
  - (c) either party calls for an Advisory Panel;
  - (d) either party indicates to the regional bishop that the reconciliation process has failed; or
  - (e) the dispute becomes the subject of litigation between the parties.

## **Part IV Advisory Panel**

### **Appointment**

17. (1) An Advisory Panel may be called by the regional bishop but only -
- (a) after a Reconciliation Panel has reached a conclusion; or
  - (b) if the regional bishop is satisfied that a Reconciliation Panel has made a serious attempt to resolve the dispute,
- and either party declares that a dispute continues to exist.
- (2) In determining whether to call an Advisory Panel, the regional bishop may have regard to the matters in subclause 7(2).

### **Composition**

18. (1) An Advisory Panel consists of 3 persons being -
- (a) one person from the Synod Pool nominated by the regional bishop (an Alternate may also be nominated from the Synod Pool);
  - (b) one lay person from the Synod Pool nominated by the Laypersons (an Alternate may also be nominated from the Synod Pool); and

- (c) one member of the clergy from the Synod Pool nominated by the minister (an Alternate may also be nominated from the Synod Pool).

(2) The member of the Advisory Panel nominated by the regional bishop is to be the convenor of meetings of the Advisory Panel.

(3) If the minister fails to nominate a member of the clergy from the Synod Pool within 7 days of being asked by the regional bishop to do so, or within such further time as the regional bishop may allow, the minister's right of nomination shall lapse and the other two members shall constitute the Advisory Panel.

(4) If the Laypersons fail to nominate a lay person from the Synod Pool within 14 days of being asked by the regional bishop to do so or within such further time as the regional bishop may allow, the Laypersons' right of nomination shall lapse.

19. A parishioner of a church in the parish is not eligible to be a member of the Advisory Panel. No member of a Reconciliation Panel may serve on an Advisory Panel hearing the same dispute.

### **Objective**

20. To restore peace with justice within the congregation either by reconciliation or by recommendation.

### **Role**

21. An Advisory Panel will convene a meeting of the parties to the dispute and may -

- (a) seek advice from additional persons including, but not limited to the Reconciliation Panel, the Archbishop or the regional bishop and invite any such persons to meet with the Panel;
- (b) use parish property, other than the rectory, for meetings as required.
- (c) request secretarial assistance from the parish; and/or
- (d) make procedural recommendations to any party to a dispute, the regional bishop or the Archbishop.

### **Meetings**

22. The Advisory Panel -

- (a) will allow each party the opportunity to present its case by way of oral and or written submissions and to present documentary material;
- (b) will be free of legal representation;
- (c) may convene meetings with any or all parties and have the right to invite witnesses;
- (d) will minute its meetings, and provide copies to all parties, the regional bishop and Archbishop;
- (e) will have a quorum of the full Panel, that is, the convenor, one clergy member and one lay member;
- (f) may make orders as to the conduct of the meeting as it deems appropriate;
- (g) may reach its decisions by simple majority;
- (h) must observe the rules of procedural fairness; and
- (i) shall provide a written progress report to the regional bishop at least monthly and upon completion of its work.

### **Outcomes**

23. The Advisory Panel may recommend any or all of the following outcomes.

- (a) A set of actions either with a view to final resolution of the dispute, or as interim measures whose effect will be assessed after a period specified by the Advisory Panel and after which the Advisory Panel may recommend further actions.
- (b) To the minister that he take certain actions.
- (c) To the parish council, certain members of the parish council, or certain members of the congregation that they take specific actions.
- (d) To the Archbishop that the minister should be provided with certain training, leave or respite, and at whose cost.
- (e) To the Archbishop that he suggest -
  - (i) that the minister seek another position, and/or
  - (ii) that any office bearer of the parish tender their resignation.
- (f) To the Archbishop that he direct the minister and churchwardens to convene a vestry meeting to consider any recommendations of the Advisory Panel, and that the regional bishop or other person delegated by the Archbishop chair the meeting.
- (g) Any other corrections, actions, rebuke, decisions or directions deemed appropriate.

23A. An Advisory Panel shall not make any recommendation under paragraph 23(e) or (g) unless it has -

- (a) first given any person intended to be affected by the recommendation 14 days written notice of the recommendation and the reasons therefore; and
- (b) carefully considered any response to such notice.

## **Completion**

24. An Advisory Panel remains convened, notwithstanding that the terms of the Advisory Panel as members of the Synod pool have expired, until -

- (a) the parties advise the regional bishop that they have reached agreement and the dispute is resolved;
- (b) the Advisory Panel advises the regional bishop that it believes the recommended actions will be accepted and will resolve the dispute;
- (c) the Advisory Panel advises the regional bishop that the continuation of the process is unlikely to produce an outcome which will resolve the dispute; or
- (d) the dispute becomes the subject of litigation between the parties.

## **Miscellaneous**

25. A person who voluntarily takes part in proceedings with a Reconciliation Panel or Advisory Panel under this Ordinance thereby agrees that he or she will not sue in defamation in respect of anything said or done in such proceedings.

26. The Secretariat must use its best endeavours to insure members of the Reconciliation Panel and the Advisory Panel against liability for anything reasonably done in the carrying out of this Ordinance. The cost of such insurance is to be born by the parishes generally.

27. The members of the Reconciliation Panel and Advisory Panel who act reasonably in the discharge of their responsibility under this Ordinance are entitled to be indemnified against all liability they may have incurred whilst so acting. The cost of such indemnity including the reasonable legal costs of such members is to be borne by the parishes generally.

28. The reports of the Reconciliation Panel and the Advisory Panel and all communications whether written or oral that shall take place during the procedures under this Ordinance must be treated as confidential by all persons involved.

29. The Regional Bishop must -

- (a) notify the Archbishop in writing when a notification of a dispute is received under clause 6 or when he determines there is a dispute under clause 7A;
- (b) provide regular progress reports to the Archbishop during the procedures under the Ordinance; and
- (c) notify the Archbishop in writing when the procedures are completed under clauses 16 and 24.

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## **Table of Amendments**

Clause 13                      Amended by Ordinance No 32, 2001

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23 August 2001