

Church Discipline Ordinance 1996 Amendment Ordinance 2001

Explanatory Statement

The bill for the Church Discipline Ordinance 1996 Amendment Ordinance 2001 has been printed incorporating amendments for which notice was given at the 2nd session of the 45th Synod and which are acceptable to the movers of the bill pursuant to resolution 30/00.

The bill also incorporates further amendments subsequently approved by the Standing Committee. These further amendments are set out in clauses 2(h) to (n) of the bill.

Introduction

1. The Church Discipline Ordinance 1996 (printed on pages 158 to 166 inclusive of *Acts & Ordinances*) provides for the discipline of Subjects, being ministers licensed by the Archbishop and persons holding positions in the Diocese, who after ordination or while holding the position, as the case may be, engage in Unacceptable Behaviour.
2. The term "Unacceptable Behaviour" is defined to mean -
 - (a) in the case of an ordained person - sexual conduct after ordination which would be regarded by right thinking members of the Church as disgraceful and inconsistent with the standards to be observed by a Christian minister;
 - (b) in the case a person who is not ordained - sexual conduct while holding a position which would be regarded by right thinking members of the Church as disgraceful and inconsistent with the standards which should be observed by a Christian lay person holding such a position; and
 - (c) any threat, intimidation or inducement made by or at the direction of or with the consent of a person intended to persuade another person from making a complaint to the Archbishop about sexual conduct of the type referred to in paragraphs (a) or (b) by the first mentioned person.
3. There is a 4 stage process for dealing with allegations of Unacceptable Behaviour by a Subject where the Archbishop receives a complaint or has knowledge or reasonable suspicion of such conduct -
 - (a) firstly, the Archbishop must promptly appoint a person or persons to investigate the allegations;
 - (b) secondly, an experienced lawyer must report to the Archbishop on the allegations;
 - (c) thirdly, a Tribunal is to investigate the allegations and make recommendations to the Archbishop;
 - (d) fourthly, the Archbishop may act on the recommendations of the Tribunal.

4. The Archbishop has a discretion not to appoint a person or persons to investigate allegations of Unacceptable Behaviour concerning a Subject and to revoke the appointment of any such person or persons in 6 specified circumstances.

Unacceptable Behaviour

5. The bill for the Church Discipline Ordinance 1996 Amendment Ordinance 2001 provides for the amendment of the definition of Unacceptable Behaviour in the following respects -

- (a) by providing in the case of persons who are ordained that Unacceptable Behaviour includes sexual conduct prior to ordination which -
 - (i) if committed by a Christian minister would be regarded by right thinking members of the Church as disgraceful and inconsistent with the standards to be observed by a Christian minister; and
 - (ii) at the time the allegations are made is productive, or if known publicly would be productive, of scandal or evil report;
- (b) by providing in the case of persons who are not ordained that Unacceptable Behaviour includes sexual conduct prior to holding a Position which -
 - (i) if committed by a Christian lay person holding such a Position would be regarded by right thinking members of the Church as disgraceful and inconsistent with the standards which should be observed by a Christian lay person holding that Position; and
 - (ii) at the time the allegations are made is productive, or if known publicly would be productive, of scandal or evil report.

6. The expanded definition of Unacceptable Behaviour will enable the Archbishop, after the procedures in the Ordinance have been followed, to discipline licensed ministers and lay persons holding Positions who before ordination or holding the Position, as the case may be, engaged in sexual conduct which -

- (a) if committed by a Christian minister or a Christian lay person holding such a Position would be regarded by right thinking members of the Church as disgraceful and inconsistent with the standards to be observed by a Christian minister or the standards which should be observed by a Christian lay person holding that Position; and
- (b) at the time the allegations are made is productive, or if known publicly would be productive, of scandal or evil report.

Investigation of Allegations of Unacceptable Behaviour

7. The discretion of the Archbishop not to investigate allegations of Unacceptable Behaviour has been enlarged to include the following 2 circumstances -

- (a) where there is insufficient evidence to warrant an investigation;
 - (b) where an alternative course of action is endorsed by a meeting of at least 3 Advisers and the Archbishop and the Archbishop implements that course of action.
8. An alternative course of action is only taken to have been endorsed by a meeting of at least 3 Advisers and the Archbishop if -
- (a) the Advisers present at the meeting include an experienced lawyer and at least one man and one woman;
 - (b) reasonable steps have been taken to consult -
 - (i) with each Injured Party, or where the Injured Party is a Disable Person a Representative of that Injured Party, whose address is known, as to the proposed alternative course of action; and
 - (ii) with the Subject after notification of the nature of the allegations as to the proposed alternative course of action.
9. At the conclusion of any alternative course of action he has implemented, the Archbishop must promptly appoint a person or persons to investigate the allegations if the following 3 conditions are satisfied -
- (a) none of the circumstances that allow the Archbishop not to commence or continue an investigation (such as where the allegations are frivolous or are not made in good faith) apply;
 - (b) the Injured Party, unless having had a reasonable excuse for not having done so, has fully participated in and complied with all the requirements of the alternative course of action; and
 - (c) the substance of the allegations is disputed by the Subject.

Other Person

10. The bill seeks to extend the definition of "Other Person" in clause 2(1) of the Church Discipline Ordinance 1996 to include a person who not only holds a Position but also a person who has held a Position.

Suspension

11. At present clause 11 of the Church Discipline Ordinance 1996 only permits the Archbishop, with the consent of the Standing Committee, to suspend a Subject who is a Licensed Minister in circumstances where the Archbishop is required to act under clause 5(1). The bill seeks to extend the Archbishop's power of suspension as follows -

- (a) to include circumstances in which the Archbishop *decides* to act under clause 5(1), and
- (b) to include a power to suspend a Subject who is an Other Person.

Operation

12. While clause 3 of the bill states that the amendments will apply to conduct whether occurring before or after the date on which the ordinance receives assent, the ordinance will have a future, rather than a retrospective, operation. This means that sexual conduct prior to ordination or the holding of the Position can be taken into account in determining whether the person has engaged in Unacceptable Behaviour.

Recommendation

13. The Standing Committee recommends that the Synod pass the bill as an ordinance.

For and on behalf of the Standing Committee.

GARTH BLAKE

28 August 2001