

Incapacity Ordinance 2001

No., 2001

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Long Title

An Ordinance to deal with incapable ministers.

Now the Synod of the Diocese of Sydney Ordains as follows -

Part 1 - Name and Definitions

1. Name of Ordinance

This Ordinance is the Incapacity Ordinance 2001.

2. Definitions

In this Ordinance -

“Allegation” means an allegation that a Minister is Incapable and includes any fact or circumstance that is not in dispute.

“Archbishop” means the Archbishop of Sydney or the person who, from time to time, is authorised to exercise the powers and authorities of the office of Archbishop of Sydney.

“Commission” means the commission appointed under clause 7.

“Enquiry Committee” means the committee established under clause 3.

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“Incapable”, in relation to a person who is a Minister, means-

- (a) incapable, continuously or intermittently, of managing the person’s affairs; or
- (b) by reason of a physical or mental disability of any kind, unable, continuously or intermittently, to make reasonable judgements in respect of matters relating to all or any part of the carrying out of the person’s affairs or the affairs of the person’s office as a Minister. 5

“Minister” means the person licensed to a Parochial Unit as incumbent or curate-in-charge. 10

“Parochial Unit” means a parish or provisional parish created under or recognised by the Parishes Ordinance 1979.

“Subject” means a Minister against whom an Allegation has been made.

Part 2 - Enquiry Committee 15

3. Establishment of the Enquiry Committee

The Enquiry Committee is established.

4. Constitution of the Enquiry Committee

- (1) The Enquiry Committee consists of -
 - (a) a Minister appointed by the Archbishop; and 20
 - (b) 2 lay persons, at least one of whom must be a medical practitioner, elected by the Synod at the first ordinary session of each Synod.

(2) Subject to clauses 4(3) and 5, each member of the Enquiry Committee holds office until the first day of the first ordinary session of the next Synod. 25

(3) If on the first day of the first ordinary session of a Synod the Enquiry Committee has not completed an investigation into Allegations that a Minister is Incapable the members of the Enquiry Committee investigating those Allegations continue to hold office, subject to clause 5, until such time as that enquiry has been completed and the Committee has reported to the Archbishop. 30

5. Casual Vacancies

- (1) A member of the Enquiry Committee vacates office -
 - (a) if they die, resign, or are absent from the State for a period of 3 months without leave of absence granted by the Committee; 35
 - (b) if they are unable to perform their duties as a member of the Committee; or

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(c) in the case of the member appointed by the Archbishop, if they cease to be a Minister.

(2) A casual vacancy in the office of a member of the Enquiry Committee must be filled by appointment or election of a person who is qualified in the same way as the person who has caused the casual vacancy. 5

(3) The person appointed or elected to fill a casual vacancy holds office for the remainder of the period of the person whose office became vacant. In the case of a member elected by the Synod the Standing Committee may, when the Synod is not in session, elect a person to fill a casual vacancy and that person holds office until the first day of the next ordinary session of Synod provided that if on that day the Enquiry Committee has not completed an investigation into Allegations that a Minister is Incapable, the person elected to fill the casual vacancy continues to hold office, subject to clause 5, until such time as that enquiry has been completed and the Committee has reported to the Archbishop. 10 15

Part 3 - Investigation of Allegations

6. Function of the Enquiry Committee 20

(1) Any person or persons may make a written representation to the Enquiry Committee alleging that a Minister is Incapable. Such representation shall be sent to the Diocesan Registrar who shall, within 7 days of receipt, forward a copy to all members of the Enquiry Committee. 25

(2) Upon receipt of a representation the Enquiry Committee-

- (a) must promptly notify the Archbishop and the Subject of the nature of Allegations; and
- (b) must promptly carry out an investigation into the Allegations. 30

(3) The Enquiry Committee may conduct its investigation into the Allegations in such manner as it thinks fit.

(4) After conducting an investigation into the Allegations, the Enquiry Committee must report to the Archbishop in writing about whether there is prima facie evidence that the Subject is Incapable. 35

(5) On receiving the report from the Enquiry Committee the Archbishop must notify the Subject of the contents of the report.

(6) If the report states that there is prima facie evidence that the Subject is Incapable the Archbishop must act under clause 7. 40

(7) If the report states that there is no prima facie evidence that the Subject is Incapable then no further action is to be taken

under this Ordinance in relation to the Allegations investigated by the Enquiry Committee.

7. Appointment of the Commission

- (1) If the Archbishop is required to act under this clause he must - 5
- (a) promptly appoint a Commission;
 - (b) promptly notify the Subject of the appointment of the Commission; and
 - (c) provide the Commission and the Subject with particulars of all Allegations known to the Archbishop concerning the Subject. 10
- (2) The Commission comprises 2 Ministers and 1 lay person appointed by the Archbishop.

8. Duties of the Commission

- (1) The Commission must investigate the particulars of the Allegations provided to it, and all other Allegations which come to its attention in the course of its investigation, for the purpose of determining whether the Subject is Incapable. 15
- (2) If at the commencement of an investigation, or during the conduct of an investigation, the Commission forms the opinion that there is prima facie evidence that the Subject is Incapable, the Commission must conduct a hearing. 20
- (3) In carrying out its investigation and conducting a hearing the Commission must observe the rules of procedural fairness.

9. Commission to Report to Archbishop

- The Commission must report its determination in writing to the Archbishop and in its report must - 25
- (a) set out the Commission's findings on material questions of fact; and
 - (b) refer to any evidence or other material on which the Commission's findings are based. 30

10. Action on Report

- (1) If the Commission determines that the Subject is not Incapable no further proceedings are to be taken under this Ordinance in relation to the Allegations investigated by the Commission. 35
- (2) If the Commission determines that the Subject is Incapable the Archbishop -
- (a) may invite the Subject to show cause why the Subject's licence should not be suspended; and 40

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- (b) if cause is not shown, may suspend the Subject's licence for a period not exceeding 6 months.
- (3) If the Commission determines that the Subject is Incapable the Archbishop, whether or not he has taken any action under clause 10(2), - 5
- (a) may invite the Subject to show cause why the Subject's licence should not be revoked; and
- (b) if cause is not shown, may revoke the Subject's licence at any time after 2 months and before 6 months after the invitation is made under clause 10(3)(a). 10
- (4) If the Archbishop has taken action under clause 10(2), the Archbishop may take action under clause 10(3) prior to the expiration of any period during which the Subject's licence is suspended under clause 10(2). 15

11. Rights and Emoluments of Office

- (1) While the licence of a Subject is suspended under clause 10(2), the Subject is entitled to whatever stipend, allowances and other emoluments the Subject would have been entitled to but for such suspension. 20
- (2) A Subject whose licence is revoked under clause 10(3) is entitled to possession of the rectory for a period of 3 months from the date on which the licence is revoked.

Part 4 - Other Matters

12. Resignation of a Subject

All proceedings under this Ordinance terminate upon the resignation of the Subject. 25

13. Objection to Further Proceedings

- (1) At any time during an investigation by the Commission the Subject may object to further proceedings under this Ordinance on the ground that the circumstances being investigated, or any of them, are of such a nature as could support a charge under the Tribunal Ordinance 1962. 30
- (2) Any objection made by a Subject under clause 13(1) must be reported promptly by the Commission to the Archbishop. 35
- (3) Unless the Archbishop is of the opinion that an objection made by the Subject under clause 13(1) is frivolous or vexatious, which opinion is open to question before any court of competent jurisdiction, no further investigation can be taken under this Ordinance in respect of the circumstances that could support a charge under the Tribunal Ordinance 1962. 40

(4) If the Archbishop is of the opinion that there are circumstances, other than those referred to in clause 13(3), that should be investigated by the Commission he must advise the Commission in writing and the Commission must include those circumstances in its investigation.

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14. Authority to Disclose Information

This Ordinance is sufficient authority from the Subject, who shall be taken to have given such authority, for any medical practitioner who has treated the Subject at any time in the previous 2 years to disclose information relating to that person's medical condition to the Enquiry Committee or the Commission.

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15. Repeal

The Incapacity and Inefficiency Ordinance 1906 is repealed.

I Certify that the Ordinance as printed is in accordance with the Ordinance as reported.

Chairman of Committees

We Certify that this Ordinance was passed by the Synod of the Diocese of Sydney on _____ 2001.

Secretaries of Synod

I Assent to this Ordinance.

Archbishop of Sydney
/ /2001