

THE CLERGY DISCIPLINE ORDINANCE 1966-2003

M101

Clergy Discipline Ordinance 1966-2001**AMENDED 2001****AN ORDINANCE** providing for the Trial of Members of the Clergy for Ecclesiastical Offences.**PREAMBLE**

WHEREAS it is expedient to provide for the trial for ecclesiastical offences of persons in holy orders licensed by the Bishop of Newcastle and of other persons in holy orders resident in the Diocese of Newcastle.

BE IT THEREFORE ORDAINED by the Bishop Clergy and Laity of the Diocese of Newcastle in Synod assembled as follows:-

PART 1 - PRELIMINARY

1.
 - (1) This Ordinance may be cited as the "***Clergy Discipline Ordinance 1966-2001***".
 - (2) The Tribunal Ordinance 1934 is in this clause referred to as the former Ordinance.
 - (3) The former Ordinance is hereby repealed.
 - (4) The repeal effected by sub-clause (3) of this clause shall not affect any investigation trial proceeding or remedy in respect of any right privilege obligation liability penalty forfeiture sentence or punishment and any such investigation trial proceeding or remedy may be instituted continued or enforced and any such penalty forfeiture sentence or punishment may be imposed as if this Ordinance had not been made.

- 1A. This Synod adopts in its entirety the Offences Canon No. 4 of 1962 of General Synod.

- 1B. **Amended 1984**
This Synod adopts in its entirety the Offences Amendment Canon No.7 of 1981 of General Synod

2. This Ordinance is divided into Parts as follows:-
 - Part I - Preliminary (Clauses 1-3)
 - Part II - Charges (Clauses 4-9)
 - Part III - The Board of Enquiry (Clause 10)
 - Part IV - Procedure as to Charges (Clause 11-18)
 - Part V - Diocesan Tribunals (Clauses 19-20)
 - Part VI - The Trial (Clauses 21-28)
 - Part VII - Decision, Recommendation and Sentence (Clauses 29-38)
 - Part VIII - Appeal (Clause 39)
 - Part IX - Records (Clause 40-42)
 - Part X - Miscellaneous (Clauses 43-46)

Amended 1998

3. (1) In this Ordinance (including this clause of this Ordinance) unless the context or subject matter otherwise requires or indicates:

"accused" means a member of the clergy to whom this Ordinance applies against whom a charge is made.

"accuser" means a person who makes a charge and where a charge is made by more than one person *"the accuser"* means *"each of the accusers"*.

"the Advocate" means the Advocate of the Diocese appointed pursuant to this Ordinance.

"the appellate tribunal" means the appellate tribunal constituted by and under the Constitution of the Anglican Church of Australia.

"the Bishop" means the Bishop of Newcastle.

"the Board" means the Board of Enquiry constituted as provided by this Ordinance.

"the Chancellor" means the Chancellor of the Diocese.

"ceremonial" includes ceremonial according to the use of the Church and also the obligation to abide by such use.

"charge" means a charge made pursuant to this Ordinance.

"the Church" means the Anglican Church of Australia.

"diocesan tribunal" or *"tribunal"* means a diocesan tribunal constituted as provided by this Ordinance.

"the Diocese" means the Diocese of Newcastle.

"discipline" includes the rules of the Church and the rules of good conduct.

"doctrine" means the teaching of the Church on any question of faith.

"faith" includes the obligation to hold the faith.

"licence" means a licence under seal of the bishop and *"licensed"* has a meaning corresponding with that of licence.

"member of the Church" means a baptised person who attends the public worship of the Church and who declares that he ~~or she~~ is a member of the Church and not a member of any other church.

"member of the clergy to whom this Ordinance applies" means a person licensed by the Bishop or any other person in holy orders resident in the diocese

"offence" means any of the following:

- (a) breach of faith ritual ceremonial or discipline
- (b) unchastity
- (c) drunkenness
- (d) habitual or wilful neglect of ministerial duty after written admonition in respect thereof by the Bishop
- (e) bankruptcy
- (f) wilful failure to pay just debts
- (g) conduct disgraceful in a member of the clergy and productive or likely to be productive of scandal or evil report
- (h) any offence punishable by law being a malum in se.

"parish" means parish provisional or mission district as defined by the

Parochial Ordinance of the Diocese as amended from time to time or by any ordinance (as amended from time to time) replacing that Ordinance.

Amended 2001

"*parishioner*" means a member of the Church who is entitled to vote at a meeting of a parish for the election of church wardens or who if no such meeting is provided for is at least eighteen years of age.

Amended 2003

"*the Diocesan Manager*" means the Diocesan Manager of the Diocese.

"*ritual*" includes rites according to the use of the Church and also the obligation to abide by such use.

"*the Synod*" means the Synod of the Diocese.

- (2) In this Ordinance a reference to faith includes a reference to doctrine.
- (3) In this Ordinance a reference to a Schedule is a reference to a Schedule to this Ordinance and a reference to a clause is a reference to a clause of this Ordinance.

PART II - CHARGES

Amended 2001

- 4. (1) A charge that he or she has committed an offence may be made as provided by this ordinance against any member of the clergy to whom this Ordinance applies.
- (2) Every charge so made shall be dealt with as provided by this Ordinance.

Amended 1998

Amended 2012 by Repealing 5(1) and 5(2)

- 5. (1) If a member of the clergy to whom this Ordinance applies is convicted in a criminal court of an offence which is punishable by law a charge against him or her that he or she has committed that offence may not be made at any time after the lapse of six calendar months after he or she has been so convicted. **(Repealed 2012)**
- (2) Subject to sub-clause (1) of this clause no charge that an offence has been committed may be made more than two years after that offence has been committed. **(Repealed 2012)**

Amended 2003

- (3) For the purposes of this clause the presenting to the Diocesan Manager of a charge which in all respects complies with the requirements of this Ordinance as to the making of charges shall constitute the making of that charge.
- 6. (1) A charge of breach of faith ritual or ceremonial may be made:
 - (a) against an incumbent of a parish with reference to an offence alleged to have been committed within that parish only by:
 - (i) a person appointed by the Bishop or

- (ii) any five adult communicant members of the Church who are both resident within the diocese and also bona fide parishioners of that parish.
- (b) in any other case - only by:
 - (i) a person appointed by the Bishop or
 - (ii) any five adult communicant members of the Church who are resident within the diocese.
- (2) A charge of an offence other than breach of faith ritual or ceremonial may be made by:
 - (a) the Bishop of his own mere motion or
 - (b) a person appointed by the Bishop or
 - (c) any other adult member of the church resident within the diocese.
- 7.
 - (1) Every charge shall be made by written instrument in or to the effect of the form set forth in Schedule A signed by the accuser. Accusers may sign separate instruments and the separate instruments shall be read together.
 - (2) Every charge shall be accompanied by all documents therein referred to as attached.

Amended 2003

 - (3) Every charge shall be presented by the accuser to the Diocesan Manager and every charge not made by the Bishop shall forthwith be presented (together with all documents attached thereto) by the Diocesan Manager to the Bishop.
- 8.
 - (1) This clause shall apply only where the charge is a charge of breach of faith ritual or ceremonial and is not made by a person appointed by the Bishop.
 - (2) When the charge is presented to the Bishop he shall by whatever means he shall in his absolute discretion think fit determine whether the charge is made by persons who in number and qualification fulfil the appropriate requirements of sub-clause (1) of clause 6.

Amended 2003

 - (3) If the Bishop determines that the charge is not so made he shall cause the charge to be returned to the person who presented it to the Diocesan Manager and shall cause each of the persons who made the charge to be given notice in writing of his determination and of the reason therefore and no further action shall be taken under this Ordinance with respect to that charge unless and until it is made by persons who in number and qualifications fulfil the appropriate requirements of sub-clause (1) of clause 6 and within the time specified by Clause 5.
- 9. A charge shall on its mere production before the Board (or a diocesan tribunal) be prima facie evidence of the truth of the declarations made in it in accordance with paragraph 5 of the form set forth in Schedule A.

PART III - THE BOARD OF ENQUIRY

10. (1) There shall be a Board of Enquiry constituted as hereinafter provided.

Amended 1998

- (2) The Board shall consist of seven members - namely a chairman three clergy and three lay members all of whom shall be members of the Synod.

Amended 1998

- (3) On the passing of this Ordinance and thereafter at the first session of every Synod the Bishop shall appoint one member of the Synod to be the Chairman of the Board and from among the members of the Synod one member of the-clergy and one lay member to be members of the Board and the Synod shall elect from among its members two clergy and two lay members to be members of the Board.

Amended 1998

- (4) Subject to sub-clause (5) of this clause a member of the Board shall hold office until the conclusion of the first session of that Synod which next follows his or-her election or appointment as a member of the Board.

Amended 2001

- (5) The office of a member of the Board shall ipso facto be vacated if he or she:

- (a) ceases to be a member of Synod or
- (b) resigns his or her office or
- (c) refuses or neglects to act in his or her office or
- (d) becomes in the opinion of the Bishop incapable of acting in his or her office and is given notice accordingly in writing by the Bishop or
- (e) is charged under this Ordinance with an offence.

Amended 1998

- (6) If a member of the board dies or if the office of a member of the Board is vacated pursuant to sub-clause (5) of this clause the Bishop may appoint a member of the Synod to be a member of the Board in his or her place (but may appoint only a member of the clergy in place of a member of the clergy and only a layman in place of a layman).

Amended 2001

- (7) A quorum of the Board shall be three members namely:-

- (a) the Chairman
- (b) a member of the clergy
- (c) a lay member

Provided that each of the two members other than the chairman shall (to

the extent and to which the operation if any of sub-clause (5) and (6) of this clause does not otherwise require) be a member elected by the Synod.

PART IV - PROCEDURE AS TO CHARGES

11. (1) The Bishop shall refer to the Board every charge of breach of faith ritual or ceremonial and all documents attached thereto and the Board shall without the necessity of hearing any person decide whether or not to allow it as a charge proper to be heard and shall inform the Bishop of its decision.

- (2) The Bishop shall as to every charge which is neither:

- (a) a charge of breach of faith ritual or ceremonial nor
- (b) a charge made by the Bishop of his own mere motion without the necessity of hearing any person decide whether or not to allow it as a charge proper to be heard.

Amended 2003

12. If the Board or the Bishop as the case may be decides pursuant to clause 11 not to allow a charge as a charge proper to be heard the Bishop shall cause the accuser to be given notice in writing accordingly, the charge shall be returned to the Diocesan Manager, and no further action shall be taken under this Ordinance with respect to that charge.

13. (1) A charge which the Board or the Bishop as the case may be decides pursuant to clause 11 to allow as a charge proper to be heard shall be dealt with as provided in the clauses of this Ordinance which succeed this clause and those clauses shall apply only to such a charge.

- (2) A charge made by the Bishop of his own mere motion shall be deemed to be a charge which the Bishop decides pursuant to clause 11 to allow as a charge proper to be heard.

14. The Bishop shall cause to be served on the accused within one month of a charge being presented to the Registrar:-

- (a) a copy of the charge and of each document attached thereto and
- (b) a notice in writing requiring the accused to reply in writing to the charge within twenty-one days from the date of the notice.

Amended 2001

15. (1) If he or she so desires the accused may in his or her reply:

(Case A): Where one offence only is charged - admit the commission of that offence and submit as prescribed.

(Case B): Where two or more offences are charged - admit the commission of each of those offences and submit as prescribed.

Amended 2001

- (2) In sub-clause (1) of this clause "submit as prescribed" means "submit himself or herself without further proceedings to such judgement and sentence in respect of the offence (or offences, as the case may be) the commission of which he or she admits as the Bishop shall think fit to pronounce".

16. (1) This clause shall apply in the following cases only:-
- (a) Case A of clause 15.
 - (b) Case B of clause 15.
- (2) The Bishop shall cause the accused and the accuser to be given notice in writing:-
- (a) that the accused having admitted the commission of the offence (or as the case may be of each of the offences) charged and having submitted as provided by clause 15 the Bishop intends to pronounce judgement and sentence at the time and place specified in the notice.
 - (b) that all persons who so desire may then be present.

Amended 1998-

- (c) that the accused will then be given opportunity to show cause and if he or she so desires to be heard in excuse or mitigation or both before judgement and sentence are pronounced and may in the meantime make to the Bishop written representations in excuse or mitigation or both.
- (3) Subject to his giving the accused opportunity to show cause and to his hearing the accused at the time and place specified in the notice if he or she wishes to be heard in excuse or mitigation or both the Bishop shall pronounce judgement and sentence either then or there or subsequently at a time and place of which he shall cause the accused and the accuser to be given notice beforehand orally or in writing.
- (4) The Bishop may in addition to pronouncing sentence suspend the operation of the sentence. If he does so and if the operation of the sentence remains suspended for a period of two years that sentence shall thereafter have no operation. Every sentence shall if its operation is not suspended commence to operate immediately it is pronounced.
- (5) When in a case to which this clause applies the action prescribed by this clause has been taken no further action other than that which may be required by clauses 38, 40 and 41 shall be taken under this Ordinance with respect to the charge.

17. (1) Subject to clause 16:-
- (a) the accused shall be tried by a diocesan tribunal and
Amended 2003
 - (b) the Bishop shall appoint an Advocate of the Diocese to prosecute the charge and shall send to the Advocate the charge all documents therein referred to a copy of the notice referred to in Clause 14 and the reply (if any) of the accused and the Advocate shall thereupon prepare Articles of Accusation and send them and the charge to the Diocesan Manager.
- (2) Articles of Accusation shall (in a separate Article for each offence if more than one offence is charged) with reasonable particularity specify every offence charged and the time place and circumstances thereof.
Amended 2003
18. On receiving the Articles of Accusation the Diocesan Manager shall cause to be served:-
- (a) upon the accuser and the accused - copies of the Articles of Accusation.
 - (b) upon the accused - a citation to appear (at such time not less than fourteen nor more than forty days from the date of the citation and at such place as shall be specified in the citation) before a diocesan tribunal to answer the Articles of Accusation.
 - (c) upon the accuser - a copy of the citation
 - (d) upon the accuser and the accused - notices in writing requiring them to procure the attendance before the tribunal of such witnesses as they may severally desire for the purpose of accusation or defence.

PART V - DIOCESAN TRIBUNALS

- Amended 1998**
19. (1) On the passing of this Ordinance and thereafter at the first session of every Synod ten members of the Synod shall subject to subclause (2C) be elected either by ballot or otherwise as the Synod shall then determine, to be a Panel of Triers.
- Amended 1998**
- (2) Of the said ten members five shall be clergy elected by the members then present of the House of Clergy and five shall be lay persons elected by the members then present of the House of Laity.
- Added 1998**
- (2) (A) Of the 5 clergy members not less than 2 shall be male and not less than 2 shall be female
- (2) (B) Of the 5 lay members not less than 2 shall be male and not less than 2 shall be female
- (2) (C) The persons elected as clergy members or lay members as the case may be:-

- (a) the two male nominees receiving the highest and second highest number of votes for male candidates; and
 - (b) the two female nominees receiving the highest and second highest number of votes for female candidates; and
 - (c) the nominee not elected under paragraph (a) or (b) receiving the highest number of votes.
- (2) (D) If by reason of insufficient nominees of a particular gender there shall be fewer than two members of that gender elected as clergy members or lay members as the case may be, the Diocesan Council shall appoint from the members of Synod such members of the House and gender in question (such members having consented to appointment) as shall be necessary to establish the required minimum of that gender and those persons shall take office as if elected by Synod.
- (3) No member of the Board of Enquiry shall be eligible to be a member of the Panel of Triers.
- (4) Subject to sub-clause (5) of this clause a member of the Panel of Triers shall hold office until the conclusion of the first session of that Synod which next follows his or her election as a member of the Panel of Triers.

Amended 1998

- (5) The office of a member of the Panel of Triers shall ipso facto be vacated if he or she:-
- (a) ceases to be a member of the Synod or
 - (b) resigns his or her office or
 - (c) refuses or neglects to act in his or her office or
 - (d) becomes in the opinion of the Bishop incapable of acting in his or her office and is given notice accordingly in writing by the Bishop or
 - (e) is charged under this Ordinance with an offence.

Amended 1998

- (6) Any vacancy occurring in the Panel of Triers shall be filled by the House which elected the member whose place has become vacant electing one of its members in his place at the next following session of the Synod provided that if at any time so many vacancies have occurred that a diocesan tribunal cannot be duly constituted for a trial which in the opinion of the Bishop could be commenced before the next following session of the Synod the Bishop-in-Council may from among the members of the Synod fill any or all of the vacancies for the purposes only of that trial by appointing clergy of the same gender in place of clergy and lay persons of

the same gender in place of lay members to hold office for the duration only and for the purposes only of that trial.

20. (1) A diocesan tribunal shall be duly constituted for the trial of an accused so long as it consists of the following members:
- (a) either:
 - (i) the President and a Deputy President or
 - (ii) a Deputy President and
 - (b) not less than two of the clerical members of the Panel of Triers and
 - (c) not less than two of the lay members of the Panel of Triers.

Added 1998

- (1A) In summoning members of the Panel to preside at the trial of an accused, the Bishop shall, so far as is practicable, endeavour to ensure that there is a balance of gender among the male and female elected members of the Panel;
- (1B) No proceeding or purported proceeding of the Panel shall be called into question by reason of any alleged non-compliance with sub-clause (1A).
- (2) The President shall be the Bishop.
- (3) The Deputy President shall be appointed by the Bishop but the Bishop may appoint as Deputy President only the Chancellor or some other barrister or solicitor who is not a member of the Panel of Triers or of the Board.
- (4) The President shall preside over the trial if he is present. If the President is not present the Deputy President shall preside over the trial and shall and may do all things which this Ordinance requires or permits the President to do.

Amended 1998

- (5) If after the commencement of a trial a member of the tribunal ceases to hold office by reason of sub-clause (4) of clause 19 and otherwise than by reason of sub-clause (5) of clause 19 and is not re-elected to the Panel of Triers, he or she shall nevertheless continue to be a member of that tribunal (but for the purposes only of that trial) and the tribunal shall not by reason of his or her ceasing to hold office be deemed not to be duly constituted for those purposes.

Amended 1998

- (6) If after the commencement of a trial a member of the tribunal ceases to hold office by reason of sub-clause (5) of clause 19 he or she shall ipso facto cease to be a member of the tribunal.

PART VI - THE TRIAL

21. (1) A diocesan tribunal shall assemble at the time and place appointed in the citation. Each member shall make the declaration set forth in Schedule B. The trial shall then be commenced by the President causing the accused to be summoned to appear before the tribunal.

- (2) The accused may appear in person or by counsel or solicitor or (if charged with breach of faith ritual or ceremonial) by a person in holy orders.

Amended 1998

- (3) If the accused does not appear the trial may upon proof of due service of the citation upon the accused proceed in his or her absence to hearing the decision and the Bishop may pronounce sentence.

Amended 1998

- (4) If the accused appears or if the trial proceeds as aforesaid in his or her absence the President shall then read or cause to be read the Articles of Accusation.

Amended 2001

- (5) If the accused appears he or she shall then be called upon to plead to each Article and his or her plea or pleas shall be recorded. If he or she neglects or refuses to plead to any Article a plea of not guilty to that Article shall be entered on his or her behalf.

Amended 1998

- (6) If the accused does not appear and the trial proceeds as aforesaid in his or her absence a plea of not guilty to each Article shall be entered on his or her behalf

and the trial shall proceed as far as possible in the same manner as if the accused had appeared and had so pleaded.

22. The tribunal may during the trial permit amendment of the Articles of Accusation upon such terms (if any) as it thinks fit.

Amended 1998

23. (1) Witnesses shall be examined on oath or affirmation and each before giving evidence shall make the declaration oath or affirmation set forth in Schedule C. The evidence of each witness shall be reduced to writing and signed by him or her.
- (2) The rules of evidence prevailing and in force in the Supreme Court of New South Wales, including provisions relating to judicial notice proof and admissibility contained in State or Federal Acts of Parliament shall so far as is practicable apply in a trial and for the purposes of the application of

those rules and provisions a tribunal and a trial shall be taken to be respectively a court and a legal proceeding.

24. (1) The Bishop and the Chancellor may from time to time in writing signed by them make and alter rules for the conduct of trials before diocesan tribunals. All rules and alterations so made shall be laid before the next succeeding session of the Synod and shall unless and until disallowed by the Synod have the force of an Ordinance of the Synod.
- (2) Subject to any rules so made and to the provisions of this Ordinance the tribunal shall so far as is practicable follow the procedure of the Supreme Court of New South Wales.
25. The case against the accused shall be conducted before the tribunal by the Advocate.
26. The Deputy President shall determine all questions arising during the trial which are questions of law or questions of the admissibility of evidence.
27. In any trial where an issue is whether there has been a breach of doctrine:-
- (a) the opinion of experts shall be admissible as to:
- (i) the principles of the doctrine
- (ii) whether on the facts there has been a breach of the doctrine.
- (b) the President shall determine what are the principles of doctrine that are applicable.
- (c) the tribunal shall determine whether on the facts there has been a breach of the principles so determined by the President.

Amended 2003

28. The proceedings of a tribunal shall be attended by the Diocesan Manager as an officer of the tribunal and shall be open to the public provided that the President at any stage of the proceedings may order they shall be held in private by reason of their subject matter or the misconduct of the audience or for any other reason he may in his absolute discretion think fit.

PART VII - DECISION, RECOMMENDATION AND SENTENCE

29. After due examination and hearing of the case and after due deliberation the tribunal shall decide the issue as to each offence alleged and if it decides that the accused is guilty of any offence shall make such recommendations as it thinks just in the circumstances but shall not recommend any sentence other than one or more of the following that is to say monition suspension from office deprivation of rights and emoluments appertaining to office deposition from holy orders.
30. Each member of the tribunal shall have one vote as to its decision. If the votes of the tribunal on an issue are equally divided, the issue shall be deemed to have been decided in favour of the accused.

Amended 2001

31. A recommendation made by the tribunal shall be that recommendation (if any) which is supported by the greatest number of votes of members. The Bishop if he has presided over the trial may be present at and take part in the deliberations of the tribunal as to its recommendations but shall have no vote as to its recommendations. Each other member of the tribunal shall have one vote and the Deputy President shall in addition to his or her vote as a member have a casting vote.
32. If the Bishop has not presided over the trial the Deputy President shall forthwith give him notice in writing of the decision and the recommendation (if any) of the tribunal.
33. Upon the decision and the recommendation (if any) of the tribunal becoming known to the Bishop he shall forthwith:
 - (a) if every issue has been decided in favour of the accused - cause the accused and the accuser to be given notice in writing of the decisions and if the accused so requests issue a certificate in an appropriate form under his hand and seal.
 - (b) in every other case - cause the accused and the accuser to be given notice in writing of the decision and recommendation (if any) of the tribunal and cause the members of the tribunal the accused and the accuser to be given notice in writing.
 - (i) that the Bishop intends to pronounce sentence at the time and place specified in the notice
 - (ii) that all persons who so desire may then be present
 - (iii) that the accused will then if he ~~or she~~ so desires be heard in mitigation of sentence before sentence is pronounced and may in the meantime make to the Bishop written representation in mitigation of sentence.
34. (1) This clause applies where notice is given in accordance with paragraph (b) of clause 33.

Amended 1998

- (2) Subject to his hearing the accused at the time and place specified in the notice if he or she wishes to be heard in mitigation of sentence the Bishop shall pronounce sentence either then and there or subsequently at a time and place of which he shall cause the accused and the accuser to be given notice beforehand orally or in writing.
35. If the tribunal makes no recommendation as to sentence the Bishop shall pronounce such sentence as he thinks fit and may in the exercise of his prerogative of mercy suspend the operation of a sentence.

36. (1) The Bishop shall give effect to any recommendation made by the tribunal provided that if a sentence is recommended he may consult with the tribunal and in the exercise of his prerogative of mercy:
- (a) mitigate the sentence or
 - (b) suspend its operation or
 - (c) mitigate the sentence and suspend its operation.
- (2) If a sentence is recommended the Bishop shall pronounce that sentence even though he mitigates it or suspends its operation and shall also pronounce any mitigation or suspension.
37. (1) If the operation of a sentence or mitigated sentence has been suspended and remains suspended for a period of two years that sentence or mitigated sentence shall thereafter have no operation.
- (2) Every sentence or mitigated sentence shall if its operation is not suspended commence to operate immediately it is pronounced.
38. (1) The Bishop shall by writing under his hand and seal certify every sentence and every mitigation or suspension.
Amended 2003
- (2) The certificate shall be lodged with the Diocesan Manager and a copy shall be sent to the accused.
- (3) This clause shall apply both where sentence is pronounced after a trial and where sentence is pronounced pursuant to clause 16.

PART VIII - APPEAL

39. An appeal will lie to the appellate tribunal from every decision recommendation or sentence of a diocesan tribunal but in no case shall an appeal lie from any determination of a diocesan tribunal to any provincial tribunal constituted by the Constitution of the Anglican Church of Australia.

PART IX - RECORDS

Amended 2003

40. (1) The Diocesan Manager shall keep a Register of Ecclesiastical Offences in which there shall be entered in respect of every charge which within the meaning of clause 13 the Board or the Bishop decides pursuant to clause 11 to allow as a charge proper to be heard:-
- (a) the name of the accused
 - (b) the date on which the charge was made
 - (c) the names of the accusers
 - (d) the nature but not the particulars of each offence charged and the date on which it was alleged to have been committed
 - (e) whether the accused was tried by a diocesan tribunal or dealt with under clause 16

- (f) if the accused was tried by a diocesan tribunal - the date of the trial and the names of the members of the tribunal
- (g) the judgement of the Bishop or (as the case may be) the decision of the tribunal as to each offence charged
- (h) the recommendation (if any) of the tribunal
- (i) the sentence (if any) and any mitigation or suspension of sentence and the date of pronouncement thereof.

Amended 2003

- (2) No person other than the Bishop and the Diocesan Manager shall have access to the Register of Ecclesiastical Offences except with the permission of the Bishop previously given in writing.

Amended 2003

- 41. (1) Whenever a charge has been returned to the Diocesan Manager pursuant to clause 12 the Diocesan Manager shall as soon as is practicable seal up in a suitable container endorsed with the name of the accused the charge and every document attached thereto.

Amended 2003

- (2) Whenever a trial has been held under this Ordinance the President shall cause to be delivered to the Diocesan Manager and the Diocesan Manager shall as soon as is practicable seal up in a suitable container endorsed with the name of the accused the charge and every document attached thereto the reply (if any) of the accused the Articles of Accusation the transcript of evidence the record of proceedings every exhibit not directed by the tribunal to be handed back to the party who tendered it and all records of the tribunal.

Amended 2003

- (3) The Diocesan Manager shall subject as hereinafter provided preserve intact in the Diocesan Registry every container sealed up pursuant to this clause.
- (4) No person other than the Bishop shall have access to the contents of any container sealed up pursuant to this clause except with the permission of the Bishop previously given in writing.

Amended 2003

- (5) The Diocesan Manager shall as soon as is practicable after the death of the accused destroy every container and the contents of any container sealed up pursuant to this clause and endorsed with the name of the accused.

Amended 2003

- 42. If access to the Register of Ecclesiastical Offences or to the contents of any container referred to in clause 41 is bona fide required for the purposes of a trial under this Ordinance or an appeal or other legal proceedings the Bishop shall give the necessary permission and every person permitted access may at his or her own expense take or be provided by the Diocesan Manager with copies of (as the case may be) any relevant entry in the Register or any of the contents of the container but in every other case the Bishop may in his absolute discretion give or refuse the necessary permission.

PART X - MISCELLANEOUS

Amended 2003

43. A certificate in writing signed by the Diocesan Manager that a person is within the mean of this Ordinance a person in holy orders:

- (a) licensed by the Bishop or
- (b) not licensed by the bishop but resident in the diocese, shall be prima facie evidence of the matters therein stated.

44. A document certified in writing signed by the Bishop to be a true copy of a written admonition in respect of ministerial duty given by him to a person and on a date specified in that certificate shall be prima facie evidence that written admonition was given by the Bishop to that person on that date in the terms appearing in the document.

Amended 2003

45. Any document produced before a diocesan tribunal purporting to be sealed or signed by the Bishop or signed by the Diocesan Manager shall in the absence of evidence to the contrary be deemed to be duly sealed or signed by the Bishop or signed by the Diocesan Manager as the case may be.

Amended 2001

46. (1) Whenever it is provided by this Ordinance that any notice or other document shall be, or that any one shall cause any notice or other document to be given sent or presented to or served on any person that provision shall be deemed to have been complied with if the notice or document is given presented to or served on that person personally or sent by prepaid registered or certified post or otherwise addressed to him or her at his or her usual or last-known address.

Amended 2001

- (2) A notice or other document sent to any person addressed as aforesaid by prepaid registered or certified post shall be deemed to have been received by him or her on the day on which he or she would have received it in the ordinary course of post.

Amended 2003

- (3) A certificate in writing signed by the Diocesan Manager that a notice or other document has been given presented to or served on any person personally or sent to any person addressed as aforesaid by prepaid registered or certified post shall be conclusive as to the matters therein stated including any matters therein stated relating to time date or place of posting.

SCHEDULE A

FORM OF CHARGE

Amended 2001

1. I (or: We) (insert name or names) of (insert address or addresses) do hereby make charge that the Reverend (insert name) of (address) (if appropriate add: incumbent of the parish of [name]) being a person in holy orders licensed by the Bishop of Newcastle (or as the case may be: being a person in holy orders not licensed by the Bishop of Newcastle but resident in the Diocese of Newcastle) has committed the offence of (here describe the offence in accordance with the

appropriate words in the definition of "offence" in Clause 3 (1) of the Ordinance) in that he or she (here give particulars of the time, place and circumstances of the offence).

2. I (or: We) have attached hereto a list showing the names and address of witnesses now known to me (or: us) who can give evidence relating to the said charge.
3. I (or: We) have attached hereto the documentary evidence now in our possession relating to the said charge.

(or:)

I (or: We) have no documentary evidence in our possession relating to the said charge.

4. I (or: We) desire that the said charge be dealt with in accordance with the Constitution of the Anglican Church of Australia and the Clergy Discipline Ordinance 1966-2001 of the Diocese of Newcastle.

5. I do (or: Each of the undersigned does) hereby solemnly and sincerely declare as follows:

A. I have been duly appointed by the Bishop of Newcastle to make the said charge.

B. (if the offence charged is breach of faith ritual or ceremonial and declaration A is not appropriate);

I am:

Amended 2001

1. over the age of eighteen years
2. within the meaning of the said Constitution a communicant member of the Anglican Church of Australia and am not a member of any other Church and am resident within the Diocese of Newcastle (if appropriate add: and a bona fide parishioner of the parish of [name]).

C. (if the offence charged is not a breach of faith ritual ceremonial and declaration A is not appropriate):

I am:-

1. of the age of eighteen years
 2. within the meaning of the said Ordinance a member of the Anglican Church of Australia
 3. not a member of any other church
 4. resident within the Diocese of Newcastle.
- D. I do not make the said charge from any private ill-will towards the said Reverend (name) or from any improper motive.
- E. I believe the said charge to be substantially true.

Signature(s):

Date:

SCHEDULE B

DECLARATION OF MEMBER OF TRIBUNAL

I do solemnly and sincerely declare that I will well and truly try the (several) article(s) of accusation now to be exhibited before me and that I will to the best of my judgment and ability find according to the evidence.

SCHEDULE C

OATH OF WITNESS

The evidence which I shall give before this tribunal will be the truth the whole truth and nothing but the truth So help me God.

AFFIRMATION OF WITNESS

I do solemnly and sincerely affirm that the evidence which I shall give before this tribunal will be the truth the whole truth and nothing but the truth.