

THE ANGLICAN DIOCESE OF NEWCASTLE

DIOCESAN COUNCIL

AUGUST 2014

DIOCESAN INTEGRITY COMMISSION

In 2012, the Synod asked for a process by which procedural fairness could be ensured in Professional Standards processes. Initially an attempt had been made to include that in the Professional Standards Ordinance 2012.

The Chancellor prepared a paper for the Diocesan Council in 2013 (Appendix A) which was accepted by the Diocesan Council. The Diocesan Council formed the view at the time that the 2013 Synod should be a 'utilitarian' Synod which would only consider essential matters as the a Synod was called at a similar time for the purpose of electing a Bishop. As a result, the drafting of legislation has been deferred.

A draft Bill has been received (Appendix B) but there has been no opportunity to consult with the Professional Standards Committee about it. In order for it to form part of the Synod papers for 2014 it would need to be approved at this meeting of the Diocesan Council. The Diocesan Council earlier this year affirmed that its practice would be to consult with the PSC before amending policy that had implication for the work of the PSC.

In seeking to determine the best way forward, the Diocesan Council needs to bear in mind that only the Synod can make an ordinance to make provision for dealing with cases of incapacity for, or inefficiency in, the discharge of ministerial duty by members of clergy licensed by the Bishop of the Diocese and only the Synod can make provision for what cases the licence of a member of clergy licensed by the Bishop of the Diocese may be suspended or revoked. Any such licence may be suspended or revoked by the Bishop of the Diocese. It can be argued that the Bill, as drafted, may deal with a matter relating to the inefficiency of a licensed member of the clergy serving as a Diocesan Officer if only to the extent of redress.

Recommendations

1. That the Synod be advised of progress as part of a supplementary report from the Diocesan Council.
2. That the Diocesan Business Manager forward the Bill to the Professional Standards Committee for their consideration and advice to the Diocesan Council.

APPENDIX A –

ANGLICAN CHURCH OF AUSTRALIA - DIOCESE OF NEWCASTLE

Diocesan Council - May 2013

Ensuring integrity in disciplinary processes

A member of the clergy can be the subject of a number of disciplinary and ministry review processes including the professional standards processes. A member of the laity may also be subject to disciplinary processes.

A person who is subject to such processes is entitled to know that the relevant officers will comply with the rules and procedures that have been established.

Where they have a concern about that compliance they may wish to have those concerns considered before the disciplinary process concludes.

It is also important to ensure the integrity of disciplinary processes and not allow them to be subject to constant procedural reviews. It is not uncommon for this approach to be used by defence lawyers in the wider community.

There is merit in establishing a Diocesan Integrity Commission. The Commission would receive and ensure the assessment of any complaint of unfairness in any disciplinary process. The Diocesan Integrity Commission would receive a written complaint to the Diocesan Business Manager accompanied by the payment of a fee stipulated by the Diocesan Council (in 2013 this would be \$600). The Commission will refer the complaint to a person who is or has been a Chancellor or Deputy Chancellor for determination and who would receive a fee set by the Diocesan Council (in 2013 this would be \$500). The complaint would be determined within 21 days and the decision would be binding on all parties. If the complaint is upheld the stipulated fee would be refunded in full.

The work of the commission is to ensure the prompt administration of any complaint. The members are not involved in determining the complaint and should be in a position to process the complaint quickly. The commission should comprise the three senior clergy of the diocese by date of admission to the diocese and living within 75 kilometres of the Diocesan Office but not exercising a ministry in the Diocesan Office. The Diocesan Business Manager will be the secretary to the Commission. Any member may sit individually.

It may be contended that this proposal affects the way suspension or revocation of a licence may occur so it would be prudent for any ordinance be considered by the Synod rather than the Diocesan Council.

Peter Young
Chancellor

Recommendation: That the Diocesan Council request the Chancellor to draft legislation for consideration by the 2014 session of the Synod.

Appendix B - Newcastle Integrity Commission Ordinance 2014

EXPLANATORY MEMORANDUM

1. The Synod in 2012 asked for a process that would enable allegations of procedural failings in professional standards processes to be reviewed promptly.
2. The Diocesan Council has been advised that it is preferable for there to be an internal process that enables prompt consideration of a matter rather than requiring an aggrieved person to have resort to civil processes.
3. The process needs to be simple.

THE BILL

Whereas A: it occasionally happens that a person against whom criticism is made or proceedings are taken considers that he or she has been unfairly or inappropriately dealt with by an officer or officers of this diocese.

B: It is desirable that any such person have the opportunity of having the question of past treatment by such officer or offices being determined with expedition.

NOW BE IT ORDAINED BY THE SYNOD OF THE DIOCESE OF NEWCASTLE AS FOLLOWS

1. This ordinance may be cited as the Newcastle Integrity Commission Ordinance 2015.
2. There shall be an Integrity Commission for the Diocese (the Commission)
3. The Commission shall consist of the three most senior members of clergy in the Diocese who reside within 75 kilometres as the crow flies from Christ Church Cathedral Newcastle able and willing to serve on the Commission.
4. For the purpose of section 3, seniority is determined from the date that a member of clergy first was licensed in this Diocese. Provided that no period of service thereafter which was outside the Diocese shall be included.
5. No person who is or has within seven years previous to the relevant request to the Commission, been a bishop, archdeacon or has within 7 years exercised a ministry in the Diocesan office shall be considered to be a senior member of clergy for the purpose of section 3.

6. A person may seek a ruling from the Commission if he or she considers that he or she has
 - a. been unfairly dealt with by a decision of one or more Diocesan officers, and as a result has either and
 - b. either been made the subject of public criticism or has had proceedings brought against him or her

7. For the purpose of section 7 a Diocesan Officer shall mean
 - a. a Bishop of the Diocese
 - b. an Assistant Bishop
 - c. an Archdeacon
 - d. a Diocesan Business Manager
 - e. a Director of Professional Standards
 - f. the Professional Standards Committee or delegate
 - g. a Chancellor
 - h. a Deputy Chancellor
 - i. such other officers as the Diocesan Council may from time to time determine

8. An application for a ruling under this ordinance shall be made in writing to the Bishop or the Diocesan Business Manager accompanied by a deposit of \$500 or such larger amount as the Diocesan Council may fix from time to time.

9. An application shall be accompanied also by one or more statutory declarations deposing to all the relevant facts relied upon by the applicant.

10. The Diocesan Business Manager is the secretary to the Commission unless the matter relates to the Diocesan Business Manager whereupon the Bishop shall appoint another person to act as secretary to the Commission.

11. The secretary shall not process any such applications until the deposit is paid unless the Diocesan Council decides otherwise.

12. As soon as possible after receipt of an application for a ruling (accompanied by the deposit) the Secretary shall (A) convene a meeting of the Integrity Commission to take place not earlier than 22 days nor more than 30 days thereafter and (B) request the diocesan officer or offices the subject of the complaint to make any reply to the allegations in the application he or she concedes appropriate provided such reply is made within 21 days.

13. A sufficient response to the allegations may include that the matters the subject of unfair dealing
 - a. are not public or have only been made public by the applicant, or
 - b. are not the subject of proceedings against the applicant, or

- c. are reasonable actions taken by the Diocesan Officer and carried out in a reasonable manner.
14. A meeting of the Commission may take place by meeting in person, by telephone or email.
 15. The Commission shall refer the application together with the statutory declarations and any reply to a person who is or has been a Chancellor or Deputy Chancellor of a Diocese, but is not nor has ever been in such an office in this Diocese (“the decision maker”).
 16. The person appointed shall endeavour to determine as expeditiously as practicable whether or not the applicant is entitled to redress and specify what redress or that the application should be handled in some other manner.
 17. The determination shall be reported to the Commission which shall furnish the result of the determination to the applicant, the respondent and the Bishop and may decide to furnish any reasons given by the decision maker.
 18. The Commission may publish the determination in such manner as it deems fit.
 19. The said determination is to be final and conclusive.
 20. Should the Commission consider that the applicant has achieved significant redress the deposit shall be refunded.