

# Diocesan Tribunal Ordinance 2017

No , 2017

## Long Title

An Ordinance to make provision for the Diocesan Tribunal.

The Synod of the Diocese of Sydney ordains as follows.

## CHAPTER 1 PRELIMINARY

5 **Note:** *This Chapter is made under and for the purposes of the Anglican Church of Australia Constitution Act 1961 and, in particular, Chapter IX (The Tribunals) of the Schedule to that Act. In order to understand more easily the disciplinary scheme that is found partly in that Act and partly in this Ordinance, summaries of the relevant provisions of that Act are included as notes at appropriate places in this Ordinance. As the*  
10 *notes do not necessarily reproduce the exact text of that Act, reference should, where necessary, be made directly to that Act.*

### 1. Name

This Ordinance is the *Diocesan Tribunal Ordinance 2017*.

## PART 1 INTERPRETATION

### 15 2. Definitions

In this Ordinance,

**Tribunal** means the Diocesan Tribunal.

**Reportable Conduct** means sexual misconduct committed against, with or in the presence of a child, including grooming of a child, or any serious physical assault of a child.

20 **sexual misconduct** has the same meaning as in the *Child Protection (Working with Children) Act 2012*.

### 3. Notes

(1) Notes in this Ordinance are for explanatory purposes only and do not form part of this Ordinance.

25 (2) The Diocesan Secretary is authorised to update the notes when reprinting this Ordinance under clause 8 of the *Interpretation Ordinance 1985*.

## PART 2 JURISDICTION OF THE TRIBUNAL

### What is the nature of the Tribunal?

30 **Note:** *Section 54(1) of the 1961 Constitution provides that the Diocesan Tribunal is the court of the Archbishop.*

### What is the jurisdiction of the Tribunal?

**Note:** *Section 54(2) of the 1961 Constitution provides that the Diocesan Tribunal has jurisdiction to hear and determine charges of breaches of faith, ritual, ceremonial or discipline and of such offences as may be specified by canon, ordinance or rule in respect of –*

- 35
- *a person licensed by the Archbishop, or*
  - *any other person in holy orders resident in the diocese.*

*Offences specified in the Offences Ordinance 1962 are –*

- 40
- (a) *unchastity,*
  - (b) *drunkenness,*
  - (c) *habitual and wilful neglect of ministerial duty after written admonition in respect thereof by the Bishop of the Diocese,*
  - (d) *wilful failure to pay just debts,*
  - (e) *conduct, whenever occurring –*
    - (i) *which would be disgraceful if committed by a member of the clergy, and*

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- (ii) which at the time the charge is preferred is productive, or if known publicly would be productive, of scandal or evil report,
- (f) sexual abuse,
- (g) child abuse,
- 5 (h) conviction in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or upwards or the conviction outside New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable,
- (i) grooming,
- (j) inappropriate pastoral conduct involving a child, and
- 10 (k) possession, production or distribution of child exploitation material.

Section 54(2A) of the 1961 Constitution provides that the Diocesan Tribunal also has jurisdiction to hear a charge relating to an offence of unchastity, an offence involving sexual misconduct or an offence relating to a conviction for a criminal offence that is punishable by imprisonment for 12 months or more in respect of a member of the clergy if –

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- the act of the member of the clergy which gave rise to the charge occurred in the Diocese, or
  - the member of the clergy was licensed by the Archbishop or was resident in the Diocese within 2 years before the charge was laid, or
  - the member of the clergy is in prison as a convicted person at the time the charge was laid, but within 2 years before imprisonment was licensed by the Archbishop or was ordinarily
- 20 resident in the Diocese.

### PART 3 CHARGES

**Note:** Section 54(3) of the 1961 Constitution provides that a person appointed by the bishop of a diocese or any five adult communicant members of this Church resident within the diocese may promote a charge against any person licensed by the bishop of the diocese or against any other person in holy orders resident in the diocese in respect of breach of faith ritual or ceremonial either before the diocesan tribunal or before the provincial tribunal in its original jurisdiction. A charge be preferred against a rector of a parish with reference to an offence alleged to have been committed within that parish the promoters must be parishioners of that parish.

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Any charge relating to faith ritual or ceremonial to be heard by the tribunal must first be referred to a board of enquiry appointed by ordinance of the diocesan synod and may proceed to a hearing if the said board allows it as a charge proper to be heard.

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By clause 29 of this Ordinance, Parts 2 and 3 of this Chapter apply to a charge in respect of a breach of faith, ritual or ceremonial in the same way as these Parts apply to a charge for other wrongdoing except as provided by Chapter 2.

#### 35 4. Archbishop's appointee

(1) The appointment by the Archbishop of a person to make a charge is to be in writing signed by the Archbishop.

(2) The appointment continues until it is revoked in writing by the Archbishop, unless the appointment is expressed to be for the purpose of making a particular charge or charges or for a specified period of time.

#### 40 5. What is the form of a charge?

(1) A charge must state –

- (a) the wrongdoing that it is alleged the person has committed, and
- (b) particulars of the acts or omissions alleged to constitute the wrongdoing.

(2) A charge may allege more than one wrongdoing.

45 (3) The allegations in the charge must be verified by statutory declaration made by the person or persons making the charge or by any other person or persons.

(4) A charge must be signed by the person or persons making the charge.

(5) A charge must include an address within the Diocese for service of documents on the person or persons making the charge.

50 (6) A charge may be, but does not have to be, in the form of Schedule 1, Schedule 2 or Schedule 3, to this Ordinance.

**6. How is a charge made?**

A charge is made by lodging a copy of the charge at the Registrar's office together with the statutory declaration or declarations verifying the allegations in the charge.

**7. Is there a time limit to the making of a charge?**

- 5 (1) Subject to clause 30, there is no time limit to the making of a charge.  
 (2) However, the Tribunal, under clause 20, may dismiss a charge for delay in making the charge.

**8. Can a charge be withdrawn?**

- (1) The person who has or the persons who have made a charge may, with the consent of the person charged, withdraw the charge at any time before it has been referred to the Tribunal by the Registrar.  
 10 (2) The person who has or the persons who have made a charge may, with the consent of the person charged and of the Tribunal, withdraw the charge at any time after it has been referred to the Tribunal by the Registrar.  
 (3) In granting its consent, the Tribunal may direct that a specified person or persons be substituted for the person or persons who made the charge.  
 15 (4) A charge is withdrawn by lodging a copy of the notice of withdrawal at the office of the Registrar.  
 (5) The notice of withdrawal is to be signed by the person or persons making the charge and the person charged.  
 (6) If a charge is withdrawn, no further proceedings may be taken under this Ordinance in relation to the charge by the person or persons who made the charge.  
 20 (7) However, the withdrawal of a charge does not prevent another person or other persons from making the same or a different charge against the person named in the charge that is withdrawn.

**9. Notice of the charge**

As soon as practicable after a charge is made against a person, the Registrar must serve a copy of the charge on the person.

**25 Circumstances in which the Archbishop may suspend a person from office****Notes:**

(1) *Suspension before promotion of charge –*

*Section 61(2) of the 1961 Constitution provides that the Archbishop may suspend a person licensed by the Archbishop, or a person in holy orders resident in the Diocese, from the duties of office where –*

- 30 (a) *a charge is proposed to be promoted under this Ordinance, and*  
 (b) *the charge will not allege a breach of faith, ritual or ceremonial, and*  
 (c) *the charge relates to an offence that is punishable by imprisonment for 12 months or more of which the person has been charged or convicted or in respect of which the Archbishop has received a report from an experienced lawyer stating that there is a prima facie case of the*  
 35 *person having committed the offence.*

*Section 61(3) – (6) of the 1961 Constitution provide that the period of suspension must not exceed 28 days from the date of service of the Archbishop's notice of suspension on the person unless the charge is promoted within the period of suspension, in which case the period of suspension continues until the first meeting of the Standing Committee thereafter. The Archbishop may revoke a suspension at any time*  
 40 *during its currency. Suspension from the duties of office does not deprive a person from the benefits appertaining to the office.*

(2) *Suspension following promotion of charge –*

*Section 61(1) of the 1961 Constitution provides that where a charge has been promoted before the Diocesan Tribunal against a person licensed by the Archbishop, the Archbishop, with the concurrence of*  
 45 *the Standing Committee, may suspend the person from the duties of his or her office until determination of the charge, or a lesser time. The Archbishop may make such arrangements for the performance of the duties of the office as may be authorised by any canon, ordinance or rule or, in the absence of such canon, ordinance or rule, as the Archbishop deems proper.*

**10. Request for answer to the charge**

- 50 (1) The Registrar must serve, with the copy of the charge –  
 (a) a request that the person charged lodge an answer to the charge at the Registrar's office within a period of not less than 21 days specified in the Registrar's request, and

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- (b) general information concerning the processes under this Ordinance, the possible sanctions that might follow if the charge is proven, and the opportunities for their mitigation or suspension (all of which may be done by providing the person charged with a copy of this Ordinance), and
- (c) a caution not to make any admissions without the benefit of legal advice.

5 (2) The Registrar may from time to time by notice in writing to the person charged extend the period specified for lodging the person's answer even though the period originally specified or any previous extension has elapsed.

#### 11. Answer to the charge

- (1) An answer to a charge must be signed by the person charged.
- 10 (2) In an answer, the person charged may do either or both of the following –
  - (a) admit all or any of the allegations in the charge,
  - (b) deny all or any of the allegations in the charge and verify such denial by way of statutory declaration lodged with the answer.
- (3) The answer, together with any statutory declaration verifying the denial of all or any of the allegations in the charge, is to be lodged at the Registrar's office.
- (4) The Registrar is to send a copy of the answer and any statutory declaration lodged with the answer to the person or persons making the charge.
- (5) The Registrar is to notify the person or persons making the charge if the person against whom the charge is made fails to lodge an answer within the requisite period.
- 20 (6) A failure by the person against whom the charge is made –
  - (a) to admit in an answer any allegation in the charge, or
  - (b) to deny in an answer any allegation in the charge and to verify such denial by way of statutory declaration lodged with the answer,

25 within the requisite period for lodging an answer to a charge is taken to be a denial of the allegation within the requisite period.

#### 12. What procedure applies if a charge (not relating to faith, ritual or ceremonial) is admitted?

- (1) If any wrongdoing alleged in a charge, or part of a charge, that does not relate to faith, ritual or ceremonial, is admitted within the requisite period for lodging an answer to the charge, the Registrar is to refer the charge, or part, to the Tribunal.
- 30 (2) The Diocesan Tribunal is to make a recommendation to the Archbishop concerning the wrongdoing admitted, in accordance with section 60(1) of the 1961 Constitution.
- (3) A recommendation for disciplinary action must not be made without giving the person against whom the recommendation is proposed to be made an opportunity to be heard in relation to the recommendation.

#### 13. What procedure applies if a charge (not relating to faith, ritual or ceremonial) is denied?

35 If any wrongdoing alleged in a charge, or part of a charge, that does not relate to faith, ritual or ceremonial, is denied within the requisite period for lodging an answer to the charge, the charge or part must be referred by the Registrar to the Tribunal.

### PART 4 PROCEEDINGS BEFORE THE TRIBUNAL

#### 14. Right of appearance

40 The person charged is entitled to appear before the Tribunal personally or by a legal practitioner.

*Note: As to the payment of the costs of legal representatives, see clause 25.*

#### 15. Prosecution of charges by person appointed by the Director

- (1) A charge is to be prosecuted by a person appointed by the Director.
- (2) The person appointed by the Director has a right of appearance before the Tribunal.

#### 45 16. Directions hearing

- (1) If any allegation in a charge is denied, the Tribunal may hold a preliminary hearing in order to give directions concerning the conduct of the proceedings and the hearing of the charge.
- (2) At a preliminary hearing, the Tribunal may be constituted by the President or a Deputy President sitting alone.

**17. What happens if the person against whom the charge is made does not appear before the Tribunal?**

If the person against whom a charge is made does not appear before the Tribunal, the Tribunal may hear the charge in the person's absence.

**18. Public hearing**

(1) A charge is to be heard in public.

(2) However, the President or, in the absence of the President, the Deputy President –

(a) may, at any time, order that a charge, or a specified part of the proceedings before the Tribunal concerning a charge, is to be heard in private, and

(b) must order that a charge, or a specified part of the proceedings before the Tribunal concerning a charge, is to be heard in private if requested to do so by 2 other members of the Tribunal.

**19. Suppression of names**

(1) The Tribunal may order that the name of, or other information that could lead to the identification of the person charged, or a person who appears, or is reasonably likely to appear, before the Tribunal is not to be published or broadcast, except in such circumstances as the Tribunal may authorise.

(2) An order of the Tribunal does not apply to the publication of a report authorised or required under this Ordinance.

**20. Dismissal of charge**

The Tribunal may dismiss a charge if it is of the opinion that the delay in making the charge causes unfairness to the person against whom the charge is made.

**21. Amendment of charge**

(1) The Tribunal may permit or direct an amendment to the charge, the particulars of the charge or the answer to the charge.

(2) If an amendment is made to the charge, the particulars of the charge or the answer to the charge, the Registrar is to give notice of the amendment, as soon as practicable after it is made, to the person appointed under clause 15(1), the person charged and the person or persons making the charge.

**22. Onus of proof**

A charge is required to be proved on the balance of probabilities.

**What are the powers of the Diocesan Tribunal concerning the production of evidence?**

***Note:** Section 9 of the Anglican Church of Australia Constitution Act 1961 and section 62 of the 1961 Constitution provide that, for the purpose of securing the attendance of witnesses and the production of documents and for the examination of witnesses on oath or otherwise, the Diocesan Tribunal is taken to be an arbitrator as referred to in the Commercial Arbitration Act 2010 (NSW) and has power to administer an oath or to take an affirmation from any witness and for the same purpose any party to a proceeding before it or any person permitted by it to submit evidence to it is taken to be a party to a reference or submission to arbitration within the meaning of the Commercial Arbitration Act 2010 (NSW).*

**23. Other determinations in relation to complaints**

(1) In dealing with a charge which contains any allegation of Reportable Conduct, the Tribunal must before making any other determination or recommendation it is empowered to make, make a finding as to whether the person engaged in any or all of the conduct the subject of each such allegation.

(2) In dealing with a complaint in respect of which information has been included on the National Register, the Tribunal must, after making any other declaration or recommendation that it is empowered to make, determine whether the complaint is false, vexatious or misconceived, or whether it is more likely than not that the subject-matter of the complaint did not occur.

**Notes:**

(1) *Section 35(1) of the Child Protection (Working With Children) Act 2012 imposes a duty on a reporting-body (which includes the Anglican Church in New South Wales, including organisations of dioceses) to notify the Children's Guardian of the name and other identifying particulars of any child-related worker against whom the reporting body has made a finding that the worker has engaged in sexual misconduct committed against, with or in the presence of a child, including grooming of a child, or any serious physical assault of a child.*

(2) *If the Tribunal determines that the complaint is false, vexatious or misconceived or that it is more likely than not that the subject-matter of the complaint did not occur, any information about the complaint*

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which has been included on the National Register may be removed from the Register under section 10(1) of the National Register Canon 2007 on the basis that it relates to a notifiable complaint which has been exhausted.

### What recommendations may the Diocesan Tribunal make?

5 **Note:** Section 60(1) of the 1961 Constitution provides that the Diocesan Tribunal shall make such recommendation as it thinks just in the circumstances, but shall not recommend any sentence other than one or more of the following –

- deposition from orders,
- prohibition from functioning
- 10 • removal from office
- rebuke.

The Diocesan Tribunal's recommendation is made to the Archbishop.

### What action may be taken by the Archbishop concerning the Diocesan Tribunal's recommendation?

15 **Note:** Section 60(2) of the 1961 Constitution provides that the Archbishop is to give effect to the Diocesan Tribunal's recommendation. However, if disciplinary action is recommended, the Archbishop may consult with the Diocesan Tribunal and in the exercise of his prerogative of mercy –

- mitigate the disciplinary action, or
- suspend its operation, or
- mitigate the disciplinary action and suspend its operation.

20 In each case, the Archbishop is to pronounce the disciplinary action recommended even though he mitigates or suspends it.

If disciplinary action or mitigated disciplinary action has been suspended and remains suspended for 2 years, the disciplinary action has no operation after the 2-year period.

### 24. Report of finding

25 (1) A determination of the Tribunal, and any recommendation made by the Tribunal, is to be contained in a report –

- (a) that sets out the Tribunal's findings on material questions of fact, and
- (b) that refers to any evidence or other material on which the Tribunal's findings were based, and
- (c) that gives the reasons for the Tribunal's determination.

30 (2) The Tribunal's report is to be given to the Archbishop, any other relevant church authority, the person or persons making the charge, the person charged and, subject to subclause (3), the Standing Committee.

(3) In making a report to the Standing Committee where the charge was not found to be proven, the Tribunal should not disclose the name of, or other information that could lead to the identification of, the person charged or a person who appeared before it.

### 35 25. Costs

(1) If the person against whom the complaint is made is represented by a legal practitioner, the Tribunal may order that the person's costs of the proceedings before the Tribunal are to be paid.

(2) If the Tribunal makes such an order, the person's costs are to be paid by the Synod in accordance with the scale of costs approved for the time being by the Standing Committee on the recommendation of the Director.

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### 26. Recommendation as to payment of witnesses expenses

The Tribunal may make a recommendation to the Director for the payment of the expenses, in an amount determined by the Tribunal, of any person who appeared as a witness before the Tribunal.

### 27. Tribunal procedures

45 The Tribunal may, subject to this Ordinance, the rules of procedural fairness and any rules made under clause 80, determine the procedures applicable for the hearing of a charge.

### 28. Rules

The Archbishop-in-Council may make rules for the conduct of the business of the Tribunal.

## PART 5 REVIEW OF THE DECISION OF A TRIBUNAL

50 **Can there be an appeal from a determination of the Diocesan Tribunal?**

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**Note:** Section 59(4) of the 1961 Constitution provides that –

- the person who brings a charge before the Diocesan Tribunal, if dissatisfied with its determination or recommendation, or
- the person against whom the charge is brought, if dissatisfied with the recommendation or the disciplinary action imposed on that recommendation,

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may appeal to the Appellate Tribunal within 28 days after the making of the determination or recommendation, or the imposing of the disciplinary action, or within such further time as the President of the Appellate Tribunal may in writing allow. In the case of disciplinary action comprising the deprivation of or suspension from office, the Archbishop may, on the lodging of the notice of appeal, if he sees fit, intermit the operation of the disciplinary action.

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Section 60(4) of the 1961 Constitution provides that the provisions of the Constitution with respect to an appeal from a determination of the Diocesan Tribunal extend to and authorise an appeal from a recommendation or the imposition of disciplinary action but do not extend to a ruling of the Diocesan Tribunal of an interlocutory nature.

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Section 57(2) of the 1961 Constitution provides that an appeal to the Appellate Tribunal is by way of re-hearing.

**CHAPTER 2**  
**BREACHES OF FAITH, RITUAL AND CEREMONIAL**  
**PART 1 CHARGES**

**Against whom may a charge be made?**5 **Notes:**

(1) Section 54(2) of the 1961 Constitution provides that a charge in respect of a breach of faith, ritual or ceremonial may be made against –

- a person licensed by the Archbishop, or
- any other person in holy orders resident in the Diocese.

10 (2) Clause 3(3)(c) of the Church Ministry Ordinance 1993 makes the failure by a member of this Church (as provided in the 1902 Constitutions) to act in accordance with a provision of a Schedule to that Ordinance an offence. Clause 3(3)(b) of that Ordinance states that, for the purposes of section 54(2) of the 1961 Constitution, the provisions of each Schedule are each a matter of ritual, ceremonial or discipline (as the case may be).

15 **Who may make a charge?**

**Note:** Section 54(3) of the 1961 Constitution provides that a charge in respect of a breach of faith, ritual or ceremonial may be made by –

- a person appointed by the Archbishop, or
- 5 adult communicant members of this Church resident within the Diocese.

20 However, if the charge is made against the incumbent of a parish with respect to a breach alleged to have been committed in the parish, the 5 adult communicant members must be bona fide parishioners of the parish.

**29. Making of charges generally**

25 Except as provided by this Chapter, Parts 3 and 4 of Chapter 1 apply to a charge in respect of a breach of faith, ritual or ceremonial in the same way as those Parts apply to a charge for other wrongdoing.

**30. Is there a time limit to the making of a charge?**

A charge in respect of a breach of faith, ritual or ceremonial must be made within one year after the alleged commission of the breach.

**PART 2 THE BOARD OF ENQUIRY**30 **Reference of charges to the Board of Enquiry**

**Note:** Section 54(3) of the 1961 Constitution provides that, before any charge relating to faith, ritual or ceremonial is heard by the Diocesan Tribunal, it must be referred to the Board of Enquiry appointed by this Ordinance. The charge may proceed to a hearing if the Board allows it as a charge that is proper to be heard.

35 **31. The role of the Board of Enquiry**

(1) The Board of Enquiry is to inquire into a charge or part referred to it in order to determine if the charge or part is one that is proper to be heard by the Diocesan Tribunal.

(2) Evidence and representations before the Board of Enquiry are to be given by means of written statements or statutory declarations.

40 (3) For the purpose of enabling the Board of Enquiry to exercise its functions under this clause it, may –

- (a) require the person or persons making the charge or invite the person charged to provide, by statutory declaration, information concerning the charge, and
- (b) permit or direct an amendment to the charge or the particulars of the charge or the answer to the charge.

45 (4) A person who provides a statutory declaration may consent to it being given to any other party. If consent is not given, the Board of Enquiry may disregard the contents of the statutory declaration.

(5) If an amendment is made to the charge, the particulars of the charge, or the answer to the charge, the Registrar is to give notice of the amendment, as soon as practicable after it is made, to the person charged and to the person or persons making the charge.

50 (6) The Board of Enquiry may dismiss a charge if it is of the opinion that the delay in making the charge causes unfairness to the person charged.

**32. Report of the Board of Enquiry**

After inquiring into a charge or part of a charge referred to it, the Board of Enquiry is to report in writing to the Registrar whether or not it is of the opinion that the charge or part thereof is a charge that is proper to be heard by the Diocesan Tribunal.

**33. Finding that the charge is a charge that is proper to be heard**

(1) If a majority of the members of the Board of Enquiry report to the Registrar that they are of the opinion that the charge or part thereof the charge is a charge that is proper to be heard by the Diocesan Tribunal, the Registrar is –

- (a) to forward the documents relating to the charge and the reports of the members of the Board of Enquiry to the Diocesan Tribunal, and
- (b) to fix a date, time and place for the hearing of the charge or part thereof, and
- (c) to serve notice of the date, time and place fixed for the hearing on the person or persons making the charge and the person charged –
  - (i) personally, or
  - (ii) by posting it in a letter addressed to the person or persons at the residential address of the person or persons last known to the Registrar.

(2) The date fixed for the hearing of a charge or part of a charge must not be less than 30 days after the date of the Registrar's notice.

**34. Finding that the charge is not a charge that is proper to be heard**

(1) If a majority of the members of the Board of Enquiry report to the Registrar that they are of the opinion that the charge or part of the charge is not a charge that is proper to be heard by the Diocesan Tribunal, the Registrar is to send a copy of the reports of the members of the Board of Enquiry to the person or persons who made the charge and the person charged.

(2) No further proceedings may be taken in relation to a charge or part of a charge to which this clause applies.

(3) However, this clause does not prevent another charge being made against the same person.

**35. Report to Archbishop**

The Registrar is to provide a copy of each report made to the Registrar under this Part to the Archbishop.

**Can there be an appeal from a determination of the Diocesan Tribunal?**

**Note:** *Section 54(4) of the 1961 Constitution provides that in matters involving any question of faith, ritual, ceremonial or discipline an appeal lies from the determination of the Diocesan Tribunal to the Appellate Tribunal.*

*Section 59(4) of the 1961 Constitution provides that –*

- *the person who brings a charge before the Diocesan Tribunal, if dissatisfied with its determination or recommendation, or*
- *the person against whom the charge is brought, if dissatisfied with the recommendation or the disciplinary action imposed on that recommendation,*

*may appeal to the Appellate Tribunal within 28 days after the making of the determination or recommendation, or the imposing of the disciplinary action, or within such further time as the President of the Appellate Tribunal may in writing allow. In the case of disciplinary action comprising the deprivation of or suspension from office, the Archbishop may, on the lodging of the notice of appeal, if he sees fit, intermit the operation of the disciplinary action.*

*Section 60(4) of the 1961 Constitution provides that the provisions of the Constitution with respect to an appeal from a determination of the Diocesan Tribunal extend to and authorise an appeal from a recommendation or the imposition of disciplinary action but do not extend to a ruling of the Diocesan Tribunal of an interlocutory nature.*

*Section 57(2) of the 1961 Constitution provides that an appeal to the Appellate Tribunal is by way of re-hearing.*

**CHAPTER 3**  
**ADMINISTRATION**  
**PART 1 TRIBUNAL**

**Who are the members of the Tribunal?**

5 **Note:** Section 54(1) of the 1961 Constitution provides that the Diocesan Tribunal is to consist of –

- a president (who is to be the Archbishop) or a deputy president appointed by the Archbishop, and
- not less than 2 other members as may be prescribed by ordinance of the Synod of the Diocese.

**35. Archbishop's appointment of the Deputy President**

- 10 (1) A person is qualified for appointment as the Deputy President if the person is an experienced lawyer.
- (2) The appointment by the Archbishop of the Deputy President is to be in writing signed by the Archbishop.
- (3) The appointment continues until it is revoked in writing by the Archbishop unless the appointment is expressed to be for the purpose of hearing a particular charge or charges or for a specified period of time.

**36. Constitution of the Tribunal for the purpose of hearing and determining a charge**

- 15 (1) Subject to subclauses (2) and (3), for the purpose of hearing and determining a charge the Tribunal is to be constituted by –
- (a) the President or the Deputy President, and
  - (b) one member of the Tribunal who is a member of the clergy appointed by the Registrar, and
  - 20 (c) one member of the Tribunal who is a lay person appointed by the Registrar.
- (2) For the purpose of hearing and determining a charge alleging an offence of child abuse or sexual abuse or an offence under clause 10, the Tribunal is to include at least one man and one woman.
- (3) For the purpose of hearing and determining a charge alleging a breach of faith, ritual or ceremonial, the Tribunal may be constituted by all its members.
- 25 (4) Nothing in this clause affects clause 16.

**37. Election of members**

- (1) During the first session of each Synod, the members of Synod voting collectively are to elect 5 members of the clergy, each of whom has been a member of the clergy for not less than 10 years, and 5 lay persons to be members of the Tribunal.
- 30 (2) The members of the Tribunal elected by the Synod must include at least two experienced lawyers and at least two men and two women.

**38. Term of office**

- (1) An elected member of the Tribunal holds office until the member's successor is elected or until the office is vacated.
- 35 (2) However, if a member's successor is elected after the Tribunal has commenced hearing a charge and before the Tribunal's recommendation concerning the charge is made, the member continues to hold office until the recommendation is made.

**39. Casual vacancies**

The office of an elected member of the Tribunal is vacated if –

- 40 (a) the member –
- (i) dies, or
  - (ii) resigns by notice in writing given to the Diocesan Secretary, or
  - (iii) becomes mentally incapacitated, or
  - (iv) becomes an insolvent under administration, or
  - 45 (v) ceases to reside permanently in the Diocese, or
- (b) the Standing Committee declares, by resolution with a majority of not less than two-thirds of the members of the Standing Committee present and entitled to vote, the member's office to be vacated because of the member's refusal, neglect or inability to perform functions as a member or because of any other reason so declared.

**40. How are casual vacancies filled?**

(1) The Standing Committee is to appoint a member of the clergy or a lay person (as the case requires) to fill a casual vacancy in the office of an elected member of the Tribunal.

(2) A person appointed under this clause holds office for the balance of his or her predecessor's term of office, subject to clauses 38(2) and 39.

**41. Ineligibility of members of the Board of Enquiry**

A person who is a member of the Board of Enquiry is not eligible to be a member of the Tribunal.

**42. Disqualification of certain members from hearing charges**

(1) An elected member is disqualified from hearing a charge that concerns the member or where the member is the person or a person who has made a charge.

(2) If an elected member is disqualified under this clause, a person is to be appointed for the purpose only of hearing the particular charge in the same way as if the disqualified member had vacated office.

**43. Decision of the Tribunal**

A decision supported by a majority of the votes of the members who constitute the Tribunal is a decision of the Tribunal.

**44. Voting on certain questions of evidence or procedure**

The President or, in the absence of the President, the Deputy President has a casting vote as well as a deliberative vote if voting on a question of evidence or procedure is equal.

**PART 2 BOARD OF ENQUIRY****45. Election of members**

During the first session of each Synod, the members of Synod voting collectively are to elect 1 member of the clergy and 2 lay persons to be members of the Board of Enquiry.

**46. Appointment of members**

(1) The Archbishop is to appoint 1 member of the clergy and 1 layperson to be members of the Board of Enquiry.

(2) Each appointment is to continue until revoked in writing by the Archbishop unless the appointment is expressed to be for the purpose of hearing a particular charge or charges or for a specified period of time.

**47. Term of office**

(1) A member of the Board of Enquiry holds office until the member's successor is appointed or elected or until the office is vacated.

(2) However, if a member's successor is appointed or elected after the Board of Enquiry has commenced an inquiry into a charge or part of a charge and before the Board of Enquiry's report of its inquiry is made, the member continues to hold office until the report is made.

**48. Casual vacancies**

The office of a member of the Board of Enquiry is vacated if –

(a) the member –

(i) dies, or

(ii) resigns by notice in writing to the Diocesan Secretary, or

(iii) becomes mentally incapacitated, or

(iv) becomes an insolvent under administration, or

(v) ceases to reside permanently in the Diocese, or

(b) in the case of a member elected by Synod, the Standing Committee declares, by resolution with a majority of not less than two-thirds of the members of the Standing Committee present and entitled to vote, the member's office to be vacated because of the member's refusal, neglect or inability to perform functions as a member or because of any other reason so declared, or

(c) in the case of a member appointed by the Archbishop, the Archbishop revokes the appointment.

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### 49. How are casual vacancies filled?

(1) In the case of a person elected by Synod, the Standing Committee is to appoint a member of the clergy or a lay person (as the case requires) to fill a casual vacancy in the office of a member of the Board of Enquiry.

- 5 (2) A person appointed under this clause holds office for the balance of his or her predecessor's term of office, subject to clauses 48(2) and 49.

### 50. Disqualification of certain members from inquiring into charges

(1) A member is disqualified from inquiring into a charge or part of a charge that concerns the member or where the member is the person or a person who has made the charge.

- 10 (2) If a member is disqualified under this clause, a person is to be appointed for the purpose only of inquiring into the particular charge or part of the charge in the same way as if the disqualified member had vacated office.

### 51. Quorum

- 15 The quorum for a meeting of the Board of Enquiry is 3 members, one of whom is a member of the clergy and two of whom are lay persons.

### 52. Commencement

Except for this clause, this Ordinance commences on the date determined under clause 113 of the *Ministry Standards Ordinance 2017*.

**SCHEDULE 1**  
**Diocesan Tribunal**  
**Charge**  
**(Made by a person appointed by the Archbishop)**

I, \_\_\_\_\_ of \_\_\_\_\_, having been appointed by the Archbishop of Sydney under clause 4 of the *Diocesan Tribunal Ordinance 2017*, claim that

of \_\_\_\_\_,  
being one or more of the following:

- \* a person licensed by the Archbishop of Sydney
- \* a person in holy orders resident in the Diocese of Sydney
- \* a member of the clergy, the act of whom which gave rise to this charge occurred in the Diocese of Sydney
- \* a member of the clergy who was licensed by the Archbishop of Sydney or was resident in the Diocese of Sydney within 2 years before this charge was laid
- \* a member of the clergy who is in prison as a convicted person at the time this charge is laid, but within 2 years before such imprisonment was licensed by the Archbishop of Sydney or was ordinarily resident in the Diocese of Sydney,

has committed

- \* the following offence, namely
- \* a breach of faith/ritual/ceremonial/discipline

(\* delete whichever are not applicable)

particulars of which are:

Signed:

Date:

The address at which documents may be served on the person making this charge is:

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I Assent to this Ordinance.

Archbishop of Sydney

/ /2017