

THE BUNBURY DIOCESAN TRIBUNAL STATUTE 1985-2018

Whereas:

- (a) Section 53 of the Constitution of the Anglican Church of Australia requires to be established a Diocesan Tribunal of each diocese to be the Court of the Bishop and to have the jurisdiction prescribed by Section 54(2) to hear and determine charges of breaches of faith ritual ceremonial or discipline and of such offences as may be specified by any ordinance or rule of a diocese.
- (b) Section 54 (3) requires the Synod of the Diocese to appoint a Board of Enquiry.

Be it therefore enacted by the Bishop, Clergy and Laity of the Diocese of Bunbury in Synod assembled:

1. This Statute shall be known as "The Bunbury Diocesan Tribunal Statute 1985".
2. The Clergy Discipline Statute 1907-1982 is repealed.
3. **Diocesan Tribunal**
 - (a) There shall be in and for the Diocese of Bunbury a Court of the Bishop to be known as the Diocesan Tribunal and it shall consist of:
 - (i) The Bishop of the Diocese who shall be President,
 - (ii) Two clerks in the holy order of priest and holding the licence of the Bishop and to be elected by Synod, and
 - (iii) A lay person to be elected by Synod.
 - (b) The initial members of the Tribunal shall be elected by Synod on the coming into force of this Statute, and they shall hold office until commencement of the First Session of the next ensuing Synod. Thereafter Synod at its First Session following the general election of synod representatives shall elect the members to the general election by it and they shall hold office until the commencement of the First Session following the general election of synod representatives for the next ensuing Synod.
 - (c) The Tribunal when sitting shall be constituted by all members and in the event of a member being disqualified from sitting at a particular hearing or in the event of a member otherwise being absent the Bishop may appoint another person with similar qualifications to constitute the Tribunal for that hearing.
 - (d) The Tribunal shall have power to hear and determine charges in respect of breaches of faith, ritual, ceremonial or discipline, and the following offences made against a person who holds the Licence of the Bishop.
 - (i) Unchastity
 - (ii) Drunkenness
 - (iii) Habitual, wilful neglect of duty after written admonition by the Bishop.
 - (iv) Wilful failure to pay just debts.
 - (v) Conduct disgraceful in a Christian and productive of scandal or evil report. This can include malicious and harmful gossip.

- (vi) Wilful neglect of the weekly worship of the church.
 - (vii) Any offence punishable by law being a notable crime.
 - (viii) The preaching or teaching of heresy or heretical practice, if the Board of Enquiry constituted by Section 6 make a recommendation that the charge be proceeded with.
 - (ix) The practice of magic or sorcery and/or any offences related thereto.
 - (x) The wilful misuse or theft of church monies or funds or church property.
 - (xi) The wilful failure to observe and practise the laws and statutes of the Diocese.
 - (xii) Wilful and deliberate disobedience to the Bishop and his instructions.
 - (xiii) Any other offences as may be specified by any statute ordinance or rule.
- (e) No charge relating to faith, ritual or ceremonial shall be heard by the Tribunal until it has been referred to the Board of Enquiry and that Board has declared it to be a charge to be heard.

4. **Deputy President**

The Bishop may at any time and from time to time appoint a priest of the Diocese holding the Bishop's licence to be Deputy President who shall at the request of the Bishop act as President at any sitting of the Tribunal. The Deputy President shall not be present at or constitute the Tribunal unless requested to act as President. An appointment of a Deputy President shall revoke any appointment of deputy President previously made.

5. **Vacancies**

- (a) The office of a member shall become vacant in the event of that member:
- (i) Dying, resigning or ceasing to live in the Diocese.
 - (ii) Being a clerical member ceasing to hold the licence of the Bishop.

A member may resign by tendering written notice to the Bishop. The Bishop alone shall determine whether or not a member is living in the Diocese.

- (b) A vacancy in the Tribunal shall be filled by a person appointed by the Bishop and the person so appointed shall have the same qualifications as the member whose office shall become vacant. The new member so appointed shall hold office until the First Session of Synod next ensuing.
- (c) A member shall be disqualified from sitting at any hearing:
- (i) In which the member is the subject of the charge.
 - (ii) In which the member is disqualified by declaring an interest or a matter that may affect the member's judgement.

6. **Board of Enquiry**

There shall be a Board of Enquiry to consist of

- (a) The following three members to be appointed by the Bishop:
 - (i) A Chairman,
 - (ii) One clerical member of Synod, and
 - (iii) One lay member of Synod.
- (b) The following two members to be appointed by the Bishop-in-Council:
 - (i) One clerical member of Synod, and
 - (ii) One lay member of Synod.
- (c) The Board of Enquiry shall be entrusted to:
 - (i) Investigate the proposed breach in a matter relating to faith, ritual or ceremonial;
 - (ii) Seek the advice and/or assistance of any other person whom they regard as competent in such matters;
 - (iii) Examine all evidence pertaining to the alleged breach;
 - (iv) Make a recommendation to the Bishop if the charge should be preceded with. If the Board of Enquiry do recommend that such a charge be brought before the Tribunal, the Bishop shall comply with such recommendation.

7. **The Church Advocate**

The person holding the office of Church Advocate under the repealed Act immediately prior to the Act being repealed shall be the Church Advocate appointed under this Statute until the First Session of the next Synod. The Synod shall at the First Session following the general election of Synod members, select by ballot a fit person, being either a duly admitted Barrister and or Solicitor of the Supreme Court of Western Australia or another Australian jurisdiction whether holding a current practicing certificate or not, to be nominated to the Bishop for appointment as Church Advocate of the Diocese, to conduct on behalf of the church all proceedings instituted under this Statute: provided that if the Bishop shall not see fit to appoint such person the Synod shall again proceed to select and nominate another fit person in like manner. Provided also that should any vacancy occur in the office of Advocate the Bishop may, with the consent of the Synod or of the Diocesan Council if the Synod is not in session, appoint a fit and proper person to be Advocate until the next meeting of the Synod.

8. **Procedure**

- (a) The Church Advocate or any five confirmed communicant members of the church who have reached the age of eighteen years, resident within the Diocese, may prefer a charge against any person specified in Clause 3 (d) of this Statute. If the charges be preferred against a priest with reference to any offence alleged to have been committed within the parish in which the priest is licensed the communicants shall be members of that parish.

- (b) The charge shall be in writing in the form set forth in Schedule A and state full particulars of the matter or matters alleged. The original shall be sent under seal to the Bishop of the Diocese and a duplicate copy to the person charged. The Bishop shall immediately refer the charge to the members of the Tribunal. The Tribunal shall meet within fourteen days of every member thereof receiving notice of the alleged offence. The Tribunal, after making such enquiries as it deems fit, shall either dismiss the charge without a hearing or declare that the charge be heard.
- (c) If the Tribunal declares that the charge is to be heard the following procedure shall be followed:
 - (i) The Bishop shall direct the Advocate to exhibit articles of accusation against the Respondent before the Tribunal and which Articles shall be signed by the Advocate.
 - (ii) The Bishop shall inform the Registrar of the Diocese of the Tribunal's intention to hold a hearing.
 - (iii) The Registrar shall then summon a hearing by notice in writing to all interested and concerned parties to the charge. This notice shall state the date, time and place of the hearing. The Registrar shall insure that this notice is sent to all parties concerned at least fourteen days before the hearing.
 - (iv) On the day appointed for the hearing the members of the Court other than the Bishop shall sign before the Bishop the declaration in Schedule B.

- (v) The argument for the defence may be made either by the Respondent himself or by his agent or counsel, or partly by the Respondent and partly by his agent or counsel, and such arguments may be written either wholly or in part.
- (vi) Every witness shall, before giving any evidence, make a solemn declaration to speak the truth, the whole truth, and nothing but the truth. All oral evidence given on the trial shall be reduced to writing, and the witness giving it shall be required to sign it. The Respondent if the witness demands it shall be examined as a witness.
- (vii) If it shall be made to appear to the Bishop of the Diocese by the Church Advocate or the Respondent, that any person whose evidence is required is unable to attend as a witness upon the hearing of the charge, for reasons satisfactory to the Bishop, the Bishop may order the examination of any such person on a day to be named in such order before a Commissary appointed by him, and upon such examination the Respondent or the Respondent's Agent or Council may cross-examine such person, and the evidence taken shall be reduced to writing by the person taking the examination and signed by the witness, if the witness be able to sign, and returned certified by the Commissary without delay to the Bishop, who shall upon demand of either party produce the same at the trial, and any evidence taken as aforesaid shall be admitted upon the trial of any charge.

- (viii) If the Respondent shall after due citation, neglect or refuse to appear, the Tribunal may proceed, as if the Respondent were present, to enquire into and decide upon the articles of accusation.
- (ix) As soon as possible after a hearing, the Tribunal shall determine the validity of the charge under consideration. It shall set forth its report in writing together with its determinations and recommendations with regard to:
 - a) The charge.
 - b) Monition.
 - c) Suspension or expulsion from office or appointed position.
 - d) Deprivation of rights and entitlements.
 - e) Deposition from Holy Orders.

The Tribunal's Report shall be signed by all its members who have made the decision. It shall be taken by, or forwarded to, the Bishop of the Diocese, under seal and the Bishop alone shall make known its contents to the person who has been charged.

The Bishop shall then exercise the Bishop's prerogative.

9. **The Bishop's Prerogatives**

The Bishop shall possess as Bishop the following prerogatives:

- (a) Mercy: The Bishop may consult with the Tribunal regarding any decision that is made or any sentence that is recommended and in the exercise of the Bishop's prerogative of mercy, may mitigate a sentence, suspend the operation of a sentence or both mitigate and suspend the same.
- (b) Enforcement: The Bishop may take all such steps as the Bishop deems necessary to enforce any decision and/or recommendation of the Tribunal.

10. **Interim Suspension**

When articles of accusation are exhibited the Bishop may suspend the Respondent from the exercise of his ministerial functions pending the trial, but the Respondent shall not before sentence to that effect be deprived of any emolument attached to the Respondent's cure.

11. **Right of Appeal**

- (a) Any appeals arising from any recommendation or sentence of the Diocesan Tribunal shall be made to the Appellate Tribunal.
- (b) All appeals must be lodged within twenty eight days of the Diocesan Tribunal's decision being made known.

12. **Costs**

The costs of all proceedings under this Statute shall be met as determined by the Diocesan Tribunal or Appellate Tribunal as the case may be.

13. **Rules**

It shall be competent for the Bishop and the Church Advocate to make all such other rules as may from time to time be necessary for regulating proceedings in the hearing and determination of causes to be brought before them, and to alter or rescind the same. Provided

that the same shall not be repugnant to any of the provisions of this Statute. All rules so made shall be laid before the Synod at the session next after the making of the same.

SCHEDULE A

I (or We) of
do hereby charge N.N. of and holding
the Bishop's Licence as a that he/she has committed the ecclesiastical
offence of the kind hereinafter set forth, that is to say, that he/she has been guilty of (here state
the offence, with particulars of time and place, and names of witnesses intended to be brought
forward) and I (or We) desire that you, the Bishop of the Diocese will forthwith cause an enquiry
to be made into these charges, in which enquiry I (or We) engage to render every assistance.
And I (or We) solemnly declare that I (We) believe that charges laid to be substantially true.

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We, being confirmed Communicants of the Anglican Church of Australia of the full age of 18
years, certify our belief that the parties bringing the above charges are worthy of credit.

E.F., confirmed communicant at

G.H., confirmed communicant at

SCHEDULE B

I, A.B., ofhereby declare that I will well and truly try the
several articles of accusation now to be exhibited and that I will find according to the evidence
to the best of my judgment and ability.

As witness my hand this day of 20.....

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Witness: D.C., of