

A BILL FOR A CLERICAL MINISTRY ORDINANCE AMENDMENT (RETIREMENT AGE) ORDINANCE 2019

Explanatory Memorandum

During the 2018 Diocesan Synod a conference session discussed removing compulsory retirement age for officeholders. This discussion arose from the fact that community expectations around retirement have changed and there is Australian anti-discrimination legislation covering this area. A significant majority of the 2018 Synod indicated that age is no longer the appropriate trigger for retirement, if it ever was. This Bill removes compulsory retirement age for officeholders, while putting in place an appropriate mechanism for reviewing ministry.

This Bill provides that when an officeholder reaches the Pension Age the Bishop may seek advice about the officeholder's ongoing ministry from the Ministry Extension Board. Such advice would consider the health, discipline and ministry development requirements of the office. The Bishop may, but is not required to, seek this advice on her/his own initiative or at the request of the Deploying Body or Diocesan Council. The Ministry Extension Board may only be asked to make a recommendation regarding an officeholder once in every 24 month period. The Bishop may, but is not required to, enact any recommendation of the Ministry Extension Board. The Bishop communicates any decision to the officeholder.

This Bill also removes the compulsory retirement age for the Bishop. Under this Bill when the incumbent Bishop reaches the Pension Age, the Chancellor convenes and chairs a meeting of the Bishop Nomination Board, which then recommends whether the Bishop should or should not continue in the office. This view is communicated by the Chancellor to the Primate who decides and communicates with the Bishop.

The Bill

Be it ordained by the Synod of the Diocese of Newcastle of the Anglican Church of Australia as follows:

1. This Ordinance may be cited as the Clerical Ministry Ordinance Amendment (Retirement Age) Ordinance 2019

Removing compulsory retirement for officeholders

2. The Clerical Ministry Ordinance 2009 is amended in the following way:
 - a. In clause 6:
 - i. the definition for "retirement age" in subclause 6(dd) is deleted; and
 - ii. the following definition is inserted :

"Pension Age has the meaning prescribed in s23 of the Social Security Act 1991 (Cth)"
 - b. Clause 9(f) is repealed and replaced with the words:

"receives a determination that his or her ministry is to conclude in accordance with Part 15 of this Ordinance;"
 - c. In clause 30 the term "retirement age" is replaced with the term "Pension Age"

- d. In clause 33(f) the term “retirement age” is replaced with the term “Pension Age”
- e. In clause 37(a) the reference to “clause 89d” is replaced with the a reference to “clause “88d”
- f. In clause 193(b) the term “retirement age” is replaced with the term “Pension Age”
- g. Clauses 198 to 201 are repealed.
- h. Clause 205 is repealed and replaced with the following:

“No person may act as a member of the Board if:

- (a) the office of that person is being reviewed; or
 - (b) continuing to act as a member of the Board would be reasonably perceived by a member of this Church as constituting an actual or perceived conflict of interest.”
- i. Clause 206 is repealed and replaced with the following:
 - “(1) The Bishop on the request of the Deploying Body, the Diocesan Council or at his/her own initiative may request that the Ministry Extension Board meet to provide advice about the ongoing ministry of an officeholder provided that:
 - (a) a request may only be made once an officeholder has reached the Pension Age; and
 - (b) a request may only be made once in every 24 month period.
 - (2) Where the Bishop makes a request in accordance with clause 206(1) he/she shall advise the officeholder in writing and advise the officeholder that he/she:
 - (a) may make a submission in writing, not exceeding a reasonable length, to the Ministry Extension Board;
 - (b) must undergo a medical examination by a medical practitioner chosen by the officeholder from the Medical Panel the results of the medical examination being made available to the Ministry Extension Board and the Bishop;
 - (c) will provide the Ministry Extension Board with a summary of any formal findings against the officeholder by a Diocesan Tribunal, a Professional Standards Board or a Bishop where the Bishop has exercised a role of direction in relation to a Diocesan Code of Conduct;
 - (d) will provide the Ministry Extension Board with a copy of the officeholders Ministry Development Review for the preceding 3 years together with a copy of the officeholder’s participation in professional supervision for the preceding 3 years.

- (3) The Board must meet to determine whether it shall recommend to the Bishop that an officeholder who has reached Pension Age is either:
- (a) complying with the requirements of this Ordinance and is able to continue to exercise the functions of his/her office with or without reasonable adjustment; or
 - (b) failing to comply with the requirements of this Ordinance and/or requires adjustments to continue to undertake his/her office which the Board believes are unreasonable
- and shall advise the Bishop of such recommendation in writing.
- (4) In making any determination in accordance with clause 206(3) above, the Board shall consider the following:
- a) the inherent health requirements of the office which the officeholder holds;
 - b) the report of the medical examination obtained in accordance with clause 206(2)(b);
 - c) the information provided by the Bishop in accordance with clause 206(2)(c) and (d); and
 - d) any submission from the officeholder.
- (5) The Board must undertake its work in accordance with any guidelines determined by the Diocesan Council with the concurrence of the Bishop.
- j. In clause 207 the reference to “twenty one days” is replaced with a reference to “forty two days”.
- k. Clause 208? is repealed and replaced with:
- “The Board may recommend that the Bishop issue a notice to an officeholder that his or her term of office will expire on a specified date being not less than 13 weeks and not more than 26 weeks from the date the Bishop notifies the officeholder. The Board shall advise the Bishop of this view and shall provide a copy of any information on which the Board has relied in reaching that decision.”
- l. Clause 209 is repealed and replaced with:
- “The Bishop is not bound to accept the recommendation of the Board but may not issue a notice in accordance with clause 208 without a recommendation to that effect from the Board.”
- j. Clause 210 is repealed and replaced with:
- “The Bishop shall advise the officeholder of the outcome of the Board and his/her decision. The Bishop is not required to give reasons for his/her decision”.
- k. Clause 211 is repealed and replaced with:
- “Where the Bishop does not issue a notice concluding an officeholders ministry, the Bishop shall advise the officeholder in writing the date on which a Ministry Extension Board can be convened again.”

Removing compulsory retirement for the Bishop

3. The Clerical Ministry Ordinance 2019 is amended by the repeal of clause 95 and the insertion of :

- (a) Upon the Bishop reaching Pension Age:
 - i. the Chancellor shall consult with the Primate about the inherent health requirements relating to the office of Bishop of Newcastle;
 - ii. the Chancellor shall obtain from the Episcopal Standards Director a record of any findings against the Bishop by a Special Tribunal, a Diocesan Tribunal, an Episcopal Standards Board or a Professional Standards Board;
 - iii. the Chancellor shall obtain a copy of the Bishop's Ministry Development Review for the preceding three years and a copy of the record of professional supervision completed by the Bishop;
 - iv. The Chancellor shall convene the Bishop Nomination Board;
 - v. The Bishop must undergo a medical examination by a medical practitioner chosen by the Bishop from the Medical Panel.
- (b) At the meeting of the Bishop Nomination Board:
 - i. The Chancellor shall convey any advice of the Primate in relation to the inherent health requirements relating to the office of the Bishop of Newcastle;
 - ii. the Board shall consider:
 - 1. the inherent health requirements of the office the Bishop of Newcastle as advised by the Primate;
 - 2. the report of the medical examination obtained in accordance with clause 95(a)(iii);
 - 3. the information obtained by the Chancellor in accordance with clause 95(a); and
 - 4. any submission from the Bishop;
 - iii. the Board shall then determine whether to recommend the continuation of the incumbent Bishop's episcopate;
 - iv. should the Bishop Nomination Board form the view that the Bishop is no longer able to fulfil the functions of his or her office, the Chancellor shall convey that view to the Primate, together with a copy of any information on which the Board has relied;
- (c) The meeting of the Bishop Nomination Board shall be chaired by the Chancellor of the Diocese (as defined by clause 73)
- (d) Following the meeting convened by the Bishop Nomination Board in accordance with clause 95(b), the Primate shall be notified in writing of any recommendation of the Bishop Nomination Board;
- (e) If the Bishop Nomination Board recommends that the incumbent Bishop's term of office should continue and the Primate accepts this recommendation, the Primate shall notify the incumbent Bishop accordingly and the process set out in clauses 95(1) and (2) shall be repeated again two years from the date of the Primate's notification under this clause;

- (f) If the Bishop Nomination Board recommends that the Bishop's term of office should not continue, and the Primate concurs with this recommendation, the Primate shall notify the Bishop in writing that his or her term of office will expire on a specified date being not less than 13 weeks and not more than 26 weeks from the date the Primate notifies the Bishop; and
- (g) In making any decision for the purposes of this clause 95, the Primate:
 - (i) is under no obligation to follow a recommendation of the Bishop Nomination Board that the Bishop's term of office should not continue;
 - (ii) must follow a recommendation of the Bishop Nomination Board that the Bishop's term of office continue; and

the Primate must notify the Bishop of any such decision in writing.”

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