

ECCLESIASTICAL OFFENCES ACT 2000.¹

Be It Enacted by the Bishop the clergy and laity of the Anglican Church of Australia within the Diocese of Bendigo duly met in Synod according to law as follows:

1. This Act may be cited as the Ecclesiastical Offences Act 2000.
2. There shall be a Diocesan Tribunal consisting of a President, who shall be the Bishop, or a Deputy President appointed by him (who may be the Chancellor) and four other members resident in the diocese two of whom shall be members of the House of Clergy of not less than ten years' standing and licensed in the Diocese and two of whom shall be communicant lay persons of whom at least one shall, if possible, have practised as a barrister or solicitor for not less than ten years. The election or appointment of a member of the Diocesan Tribunal shall be on behalf of the Bendigo Anglican Diocesan Corporation incorporated under the Bendigo Anglican Diocesan Corporation Act 2014.²
3.
 - (1) At its Ordinary Session to be held in the year 2000, Synod shall elect as members of the Tribunal two members of the House of Clergy and two lay persons of the required standing who shall hold office until the election of their respective successors by a subsequent Synod.
 - (2) Subject to the provisions of sub-section 3.1, at the first Ordinary Session of each Synod, there shall be elected as members of the Tribunal two members of the House of Clergy and two lay persons of the required standing who shall hold office until the election of their respective successors.
 - (3) A member who has entered upon the consideration of any matter shall continue to be a member of the Tribunal until the matter is concluded notwithstanding that a successor may have been elected.
4. At the time of each election there shall be elected two members of the House of Clergy and two lay persons of the required standing whose names shall be placed in the order of their election on the supplementary lists for members of the Tribunal.
5.
 - (1) The Tribunal may hear and determine matters arising under this Act although all of its members are not present at such hearing

¹ Amended by the Miscellaneous Amendments Act 2002.

² Section 2 amended in 2014 according to Schedule 2 of the Bendigo Anglican Diocesan Corporation Act 2014.

or determination provided that there are present at least one clerical member and at least one lay member in addition to the President or Deputy President.

- (2) If during the hearing of any matter any member attending the Tribunal should die or become unable to continue with the hearing, the matter may proceed so long as the President or Deputy President and one clerical and one lay member are present.
- (3) In the event that the Tribunal is evenly divided on any question of evidence or procedure, the President or Deputy President shall have a casting as well as a deliberative vote

6 The appointment by the Bishop of a Deputy President of the Tribunal shall be by writing under seal and shall be lodged with the Registrar. The appointment by the Bishop of a Deputy President of the Tribunal may be in respect only to the hearing of a particular charge or for a limited period or, if so specified, may operate until revoked in writing under seal.

- (a) A vacancy on the Tribunal shall occur when a member thereof:
 - (i) dies;
 - (ii) resigns;
 - (iii) is declared by a competent court incapable of managing his / her affairs;
 - (iv) is convicted of a criminal offence being sinful in itself;
 - (iv) ceases to reside permanently in the Diocese;
 - (v) being a clerical member, ceases to be licensed in the Diocese; or
- (b) when Synod by resolution declares the seat of a member to be vacated by reason of refusal or inability to perform the duties as a member or for some other reason therein stated.

7. In the event of a vacancy occurring in the elected members of the Tribunal such vacancy shall be filled from the appropriate supplementary list in the order in which the names of the persons elected appear on such supplementary list; provided that if there is a vacancy in a supplementary list it shall be filled in accordance with the provisions of the Elections Act 1997.

8. An elected member of the Tribunal shall be disqualified from hearing any charge which concerns that member or to the promotion of which charge that member has been a party.
9. The Tribunal shall have jurisdiction to hear and determine charges in respect of the following matters alleged against a person licensed by the Bishop or any other deacon or priest resident in the Diocese:-
 - (a) breach of faith, ritual, ceremonial, or discipline;
 - (b) unchastity;
 - (c) habitual drunkenness;
 - (d) habitual and wilful neglect of ministerial duty after special admonition in writing by the Bishop;
 - (e) insolvency, bankruptcy or failure or disability to pay just debts without sufficient excuse for such insolvency, bankruptcy, failure or disability;
 - (f) conviction of a criminal offence that is punishable by imprisonment for twelve months or upwards;
 - (g) conduct disgraceful of an ordained member of the Anglican Church of Australia and productive or likely to be productive of scandal or evil report; or
 - (h) an offence involving sexual misconduct.
10.
 - (1) A person appointed by the Bishop or any five adult communicant members of the Church resident within the Diocese may promote a charge before the Tribunal provided that if the charge be preferred against an incumbent of a parish with respect to an offence alleged to have been committed within that parish, the charge must be preferred by five adult communicant members of that parish.
 - (2) Subject to the provisions of the immediately preceding sub-section and the immediately succeeding sub-section, the Bishop of his own motion may direct a person appointed by him to promote a charge to exhibit a statement of the charge before the Chancellor against any person licensed by the Bishop or any other deacon or priest resident in the Diocese.
 - (3) The appointment by the Bishop of a person who may promote a charge before the Tribunal shall be in writing under seal and shall be lodged with the Registrar.
 - (4) The appointment by the Bishop of a person who may promote a

charge before the Tribunal shall be in respect only to the promotion of one particular charge or for a limited period or until revoked in writing under seal as is therein specified.

- (5) If an allegation is made that a person licensed by the Bishop or any other deacon or priest resident in the Diocese has committed any of the offences set out in section 10, but no charge is laid in accordance with the provisions of this Act, the licensed person, deacon or priest may require the Bishop to promote a charge before the Tribunal in accordance with the procedures set out in this Act.
11. Before any charge is heard by the Tribunal, it shall be referred to a Board of Assessors appointed as subsequently provided and the Tribunal may proceed to a hearing of the charge only if the Board, pursuant to the provisions of section 20(1) of this Act considers that it is a charge proper to be heard by the Tribunal.
12. In all matters, including matters involving any question of faith, ritual, ceremonial or discipline, an appeal shall lie from the determination of the Tribunal to the Appellate Tribunal in accordance with the provisions of Chapter IX of the Constitution and of the “Appellate Tribunal Canon 1981” or any canon repealing or amending or replacing the same and applicable to this Diocese.³
13. (1) The Board of Assessors referred to in Section 11 shall consist of three members of the House of Clergy of not less than ten years standing resident and licensed in the Diocese other than any Assistant Bishop or the elected members of the Tribunal or those whose names are on the supplementary list.

(2) The members of the Board of Assessors shall be elected by the synod in a manner consistent with the provisions contained in sections 3(1) and 3(2) hereof and shall hold office until the ensuing election of their successors. The election of the members of the Board of Assessors shall be on behalf of the Bendigo Anglican Diocesan Corporation incorporated under the Bendigo Anglican Diocesan Corporation Act 2014.⁴

(3) Any member of the Board of Assessors may resign and upon any resignation or upon the refusal or inability of a member to act, the place of that member on the Board shall be declared to be vacated.

(4) A member of the Board shall be disqualified from considering

³ Section 12 amended in 2016 according to the Ecclesiastical Offences Amendment Act 2016

⁴ Subsection 13 (2) amended in 2014 according to Schedule 2 of the Bendigo Anglican Diocesan Corporation Act 2014.

any charge which concerns that member or to the, promotion of which that member is a party and in such case another person shall be appointed by the Council of the Diocese for the purpose only of dealing with that particular charge.

14. (1) A statement of charge under this Act shall be in the form of Schedule A, Schedule B or Schedule C or as near thereto as may be appropriate and shall be in duplicate signed by the person or persons promoting the charge setting forth the particulars of such charge and shall be lodged at the Bishop's Registry together with the sum of One Hundred Dollars (\$100.00) to be used by the Registrar towards defraying the costs or expenses of the said charge.
 - (2) The Registrar shall keep an account of the sum and shall refund the balance, if any, to the persons promoting the charge.
 - (3) If the charge shall come before the Tribunal as subsequently provided, the sum shall be held by the Registrar subject to the order and disposal of the Tribunal.
15. Within seven days after the receipt of the statement of the 'charge the Registrar shall send to the Respondent by pre-paid registered post at the last known place of abode of the Respondent a copy of the statement of the charge with a request that the Respondent file in duplicate with the Registrar an answer thereto within a time to be specified in such request, being not less than twenty-one days and not more than forty two days from the date of the request provided that, if so requested by the Respondent for good reason, the Registrar may extend the time for filing the answer.
16. If the Respondent admits the charge and agrees to submit without any further proceedings to a judgment and sentence as the Bishop thinks fit to pronounce, the Bishop may deal with the case accordingly; otherwise the case shall proceed in accordance with the subsequent provisions of this Act.
17. If the Respondent, within the time specified by the Registrar under Section 15 or any extension thereof, does not admit the charge and submit to judgment and sentence pursuant to the provisions of 'section 16 or denies the charge or the Bishop declines to deal with the case under Section 16, the Registrar shall at the expiration of the time or any extension thereof convene a meeting of the Board of Assessors and submit to them the statement of the charge and the answer thereto, if any.
18. The Board of Assessors may In any matter before it require the person or persons making the charge to furnish statutory declarations in support of the statement of the charge by such person or persons or

any third persons and may allow the Respondent to support an answer in like manner. –

19. The Board of Assessors may permit or direct any amendment of the statement of the charge and of the answer at any time before reporting thereon and notice of any such amendment shall forthwith be sent by the Registrar to the opposite party.
20.
 - (1) If the Board of Assessors, or a majority thereof, reports in writing that it is of the opinion that a prima facie case has been made out against the Respondent and that the charge is one proper to be heard by the Tribunal, the Registrar shall forward the report and all papers connected with it to the Chancellor.
 - (2) If the Board of Assessors, or a majority thereof, reports in writing that it is of the opinion that a prima facie case has not been made out or that the charge is not one proper to be heard by the Tribunal, the Registrar shall forward the report to the parties involved and no further proceedings shall be taken on such charge.
21. Upon receipt by the Chancellor of a report under Section 20(1), the Chancellor shall advise the Bishop accordingly and the Bishop may with the concurrence of the Council of the Diocese suspend the Respondent named in such report from the duties of the office held by the Respondent until the determination of the charge and may make such arrangements for the performance of those duties as the Bishop may deem proper.
22.
 - (1) Upon receipt by the Chancellor of a report under Section 20(1) the Chancellor shall require the Respondent by notice in writing to appear on a day not less than thirty (30) days nor more than forty five (45) days from the date of the notice before the Tribunal sending with such notice a copy of the statement of the charge together with such other papers as are appropriate and the Chancellor shall appoint a time and place for the trial and at least twenty-one days before such trial give to the Respondent and to the person or persons promoting the charge notice of such time and place.
 - (2) The Chancellor shall have power at any time to alter the place or the time for the trial or allow an adjournment thereof, in either case with or without imposing conditions, on the application of either of the parties on giving to each of the parties at least three days' notice of such alteration.

23. 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 Tribunal shall be deemed to be an arbitrator within the meaning of the Arbitration Act 1958 (Vic) and a statement of charge made in accordance with the Act shall be deemed to be a submission to arbitration within the meaning of the Act and the Tribunal shall have power to administer an oath to or to take an affirmation from a witness and for the same purpose any party to a proceeding before the Tribunal or any person permitted by the Tribunal to submit any evidence to it shall be deemed to be a party to a reference or submission to arbitration within the meaning of the Act.,
24. If the Respondent shall refuse or neglect to appear before the Tribunal, whether in person or by counsel or by solicitor, in obedience to the notice given by the Chancellor pursuant to the provisions of section 23(1), the Tribunal, if satisfied that the notice has been given in as required and that all the other relevant provisions of this Act have been observed, may proceed to hear the charge in the absence of the Respondent.
25. (1) If upon the hearing of a charge a majority of the Tribunal finds that the Respondent is guilty, it shall so report to the Bishop and make such recommendation as it thinks just in the circumstances but shall not recommend any sentence other than one or more of the following:
- (a) admonition⁵;
 - (b) suspension from office;
 - (c) expulsion from office;
 - (d) deprivation of rights and emoluments appertaining to an office;
 - (e) deposition from Holy Orders.
- (2) The Bishop shall give effect to the recommendation provided that he may, if any sentence is recommended, consult with the Tribunal and in the exercise of his prerogative of mercy; V
- (a) mitigate the sentence; or
 - (b) suspend its operation for a period not exceeding three (3) years; or
 - (c) mitigate the sentence and suspend its operation.

⁵ Section 25 (1) (a) amended in 2016 according to the Ecclesiastical Offences Amendment Act 2016

- (2A) Where a deacon or priest who is resident in the Diocese but is not licensed by the Bishop is found to be guilty of an offence by the Tribunal, the Bishop shall consult as to penalty with the Bishop by whom the person is licensed or in which diocese the person resides at the time of the finding and no penalty may be imposed to which the latter Bishop does not express concurrence.
- (3) In each case the Bishop shall pronounce the sentence recommended even though he may have mitigated or suspended it.
- (4) If the operation of a sentence or mitigated sentence has been suspended and remains suspended for a period of three years, and there has been no other behaviour by the Respondent which offends the provisions of section 9 of this Act, the sentence shall thereafter have no operation. V
26. (1) If upon the hearing of any matter the members of the Tribunal are equally divided, the matter shall be re-heard at the request of either party.
- (2) Upon any re-hearing, if the Bishop had presided at the initial hearing, the Deputy President shall preside at the re-hearing and if the Deputy President had presided, the Bishop shall preside or may appoint some person other than the Deputy President to act as deputy president for the purpose only of such rehearing.
- (3) The members who heard the matter initially shall be deemed to have vacated their seats for the purpose only of such re-hearing and their places shall be filled for such re-hearing in accordance with the provisions of Section 7 hereof.
27. (1) Subject to the provisions of the immediately succeeding sub-section, no charge shall be entertained under or pursuant to the provisions of this Act against any person for or in respect of any offence committed or alleged to have been committed by such person unless a statement of such charge has been sent to the Registrar within one year after the commission of the alleged offence.
- (2) Notwithstanding the provisions of sub-section 27(1), whenever a charge is made against a person in respect of any offence for which a conviction or a finding of not guilty has been entered in any court of competent jurisdiction, such charge may be entertained if the statement and charge are sent to the Registrar at any time within six calendar months after such conviction or

finding or, if an appeal has been lodged against such conviction, after the date upon which such appeal is finally dealt with although more than one year shall have elapsed since the commission of the offence in respect of which the charge shall be made.

28. The hearing of any charge under this Act for any offence shall be in private provided that the Tribunal may, and on the application of the person charged shall, direct the hearing to be in public.
29.
 - (1) For the proper direction and conduct of all inquiries under this Act the Bishop on behalf of the Bendigo Anglican Diocesan Corporation incorporated under the Bendigo Anglican Diocesan Corporation Act 2014 shall appoint an officer to be styled the Advocate of the Diocese (“the Advocate”) and shall have power to remove the person so appointed from that office.⁶
 - (2) The person who at the time of the coming into operation of this Act is the Advocate of the Diocese shall continue to be the Advocate under and subject to this Act.
 - (3) Subject to the provisions of the immediate succeeding subsection, the Complainants and Respondent shall be at liberty respectively to prosecute and defend any charge in person or by counsel or by solicitor.
 - (4) If the Complainants at least fourteen (14) days before the time fixed for the trial deliver to the Registrar a written request that a charge be prosecuted by the Advocate, the prosecution of the charge shall thenceforth be carried on by the Advocate who shall be entitled to the assistance of counsel if so desired.
30.
 - (1) The Bishop, the Chancellor and the Advocate may from time to time make and alter rules for the conduct of the business of the Tribunal and all such Rules shall be laid before the Synod at its next ensuing Session.
 - (2) In the absence of any rule to the contrary, the Tribunal may regulate its proceedings in such manner as it deems advisable and may give such directions to the parties before it as it is of the opinion may be necessary for the proper adjudication on any charge before it.
31. The Tribunal may make orders for the payment of costs of the parties before it.

⁶ Subsection 29 (1) amended in 2014 according to Schedule 2 of the Bendigo Anglican Diocesan Corporation Act 2014.

32. The Council of the Diocese, on the application of any deacon or priest against whom proceedings under this Act are then pending or have been concluded, may make such allowance to that person as it shall think fit towards the expenses which may be incurred or may have been incurred in connection with proceedings undertaken pursuant to the provisions of this Act.
33. The Registrar shall have the custody and control of all documents in every case and either party to the case, upon giving reasonable notice and paying the charges and fees reasonably required by the Registrar, shall be entitled to obtain inspection of or a copy of all or any documents in any case after the Board of Assessors has reported that a prima facie case has been made out and that the charge is one proper to be heard.
34. Section 74 of the Constitution shall apply to this Act unless the context or subject matter thereof indicates the contrary.
35. Notwithstanding the provisions of this Act, if a complaint against a deacon or priest licensed by the Bishop or resident in the Diocese is made in circumstances governed by the provisions of the Professional Standards Uniform Act 2016, that complaint shall be dealt with in accordance with the procedure set out in that Act and any Protocol under that Act.⁷
36. (1) Notwithstanding the provisions of this Act, but subject to Section 35, in respect of any complaint being made either in relation to the matters set out in section 10 or in relation to any other matter whatsoever other than sexual assault or harassment it shall be lawful for the Bishop, with the written consent of the Complainant and the Respondent, to convene a panel to hear the complaint and to report to the Bishop and to make such recommendation as it thinks just in the circumstances.⁸
- (2) Every panel convened pursuant to the provisions of the immediately preceding sub-section shall adopt the procedure set out in this Act for the Tribunal, making such changes as are reasonable and necessary.
37. In this Act unless the context or subject matter otherwise indicates:
- “Bishop” means the Bishop of the Diocese of Bendigo and

⁷ Section 35 amended in 2016 according to the Ecclesiastical Offences Amendment Act 2016

⁸ Section 36(1) amended in 2016 according to the Ecclesiastical Offences Amendment Act 2016

	includes the person for the time being exercising the powers of such Bishop.
“Complainants”	means the person or persons promoting a charge against any deacon or priest in respect of any offence specified in section 10 of this Act.
“Respondent”	means any deacon or priest against whom a charge has been made.
“Chancellor”	means the Chancellor of the Diocese constituted and appointed by the Bishop on behalf of the Bendigo Anglican Diocesan Corporation incorporated under the Bendigo Anglican Diocesan Corporation Act 2014 and includes the person holding the office of Chancellor at the time of the passing of this Act or in the event of a vacancy in the office or there being an inability of, or unwillingness by, the Chancellor to act, such other person appointed by the Bishop on behalf of the Bendigo Anglican Diocesan Corporation incorporated under the Bendigo Anglican Diocesan Corporation Act 2014 to perform the duties assigned to the Chancellor by this Act. ⁹
“Registrar”	means the Registrar of the Diocese or the person for the time being performing the duties of Registrar.
“Deputy President”	means the Deputy President appointed by the Bishop or in the event of a vacancy in the office or of the appointed person being unable or unwilling to act, such other person appointed by the Bishop to perform the duties assigned to the Deputy President by this Act.
“Constitution”	means the Constitution of the Anglican Church of Australia.

⁹ Section 37 - definition of “Chancellor” amended in 2014 according to Schedule 2 of the Bendigo Anglican Diocesan Corporation Act 2014.

SCHEDULE A

Statement of Charge by a person Appointed by the Bishop

I, *A.B.* of do declare that I am a person duly appointed by the Bishop under the provisions of section 10 of the Ecclesiastical Offences Act 2000 and I do hereby charge the Reverend *C.D.* of , being a person licensed by the Bishop of Bendigo (or being a deacon or priest resident in the Diocese of Bendigo) that he/she has committed the following offence

(set out particulars).

On which charge I desire that the said *C.D.* be brought to trial and I the said *A.B.* do solemnly and sincerely declare that I do not make this charge from any private ill-will towards the same *C.D.* or with any view to my own profit and I further declare in like manner that I believe the charge laid to be substantially true.

Dated the day of

Signed: *A.B.*

SCHEDULE B

Statement of Charge by Church Members

We, *A.B.* of ,
C.D. of ,
E.F. of ,
G.H. of and
I.J. of

do hereby severally declare that we are adult communicant members of the Anglican Church of Australia resident within the Diocese of Bendigo and we do hereby charge the Reverend *K.L.* of being a person licensed by the Bishop of Bendigo (or being a deacon or priest resident in the Diocese of Bendigo) that he/she has committed the following offence

(set out particulars).

On which charge we desire that the said Reverend *K.L.* be brought to trial and we the said *A.B., C.D., E.F., G.H., and I.J.,* do solemnly and sincerely severally declare that we do not make this charge from any private ill-will towards the said Reverend *K.L.* or with any view to our own profit and we further declare in like manner that we

severally believe the charge laid to be substantially true.

Dated the day of

Signed: A.B.

 C.D.

 E.F.

 G.H.

 I.J.

SCHEDULE C

Statement of Charge against an incumbent of the Parish by Parishioners

We, *A.B.* of
 C.D. of
 E.F. of ,
 G.H. of and
 I.J. of

do hereby severally declare that we are adult communicant members of the Anglican Church of Australia resident within the Diocese of Bendigo and parishioners in the Parish of in the said Diocese and we do hereby charge the Reverend *K.L.* of incumbent of the said Parish in the said Diocese that he/she has committed the following offence

(set out particulars).

On which charge we desire that the said Reverend *K.L.* be brought to trial and we the said *A.B., C.D., E.F., G.H., and I.J.,* do solemnly and sincerely severally declare that we do not make this charge from any private ill-will towards the said Reverend *K.L.* or with any view to our own profit and we further declare in like manner that we severally believe the charge laid to be substantially true.

Dated the day of

Signed: *A.B.*

 C.D.

 E.F.

 G.H.

 I.J.