

**ANGLICAN DIOCESE OF MELBOURNE**

**LEGISLATION RELATING TO THE ARCHBISHOPRIC AND CLERGY**

**CONSULTATION PAPER**

**AUGUST 2020**

1.	INTRODUCTION .....	4
1.1	<i>Background</i> .....	4
1.2	<i>Principles</i> .....	4
1.3	<i>Process</i> .....	5
1.4	<i>Use of terms in this paper</i> .....	5
2.	THE ARCHBISHOPRIC .....	7
2.1	<i>Melbourne Archbishopric Act and the title of the new legislation</i> .....	7
3.	ASSISTANT BISHOPS AND ARCHDEACONS .....	8
3.1	<i>Assistant bishops</i> .....	8
3.2	<i>Archdeacons</i> .....	8
4.	PARISH CLERGY — CONCEPTUAL ISSUES: .....	10
4.1	<i>Introduction</i> .....	10
4.2	<i>Background to licensing and its alternatives</i> .....	10
4.3	<i>The age of vicars</i> .....	12
	MANDATORY AGE FOR CEASING AS VICAR .....	13
	INSTITUTING A PRIEST AGED OVER 70 TO A PARISH .....	13
4.4	<i>Temporary and intentional appointments</i> .....	13
4.5	<i>Incumbents who are not full-time</i> .....	16
4.6	<i>Incapacity</i> .....	17
4.7	<i>Abandonment</i> .....	18
4.8	<i>Retirement and licensing of priests aged 70 and over generally</i> .....	18
	RETIREMENT .....	19
	LICENSING AFTER RETIREMENT .....	20
5.	PARISH CLERGY— EMPLOYMENT STATUS, REMUNERATION AND OTHER CONDITIONS .....	21
5.1	<i>Introduction</i> .....	21
5.2	<i>Current law</i> .....	21
5.2	<i>Clergy other than vicars</i> .....	21

FIXED-TERM APPOINTMENTS.....	22
5.3 Who would be the employer? .....	23
5.4 The vicar as an employee.....	25
5.5 Casual and occasional ministry .....	26
5.6 Role of Diocesan Stipends Committee .....	26
5.7 Other conditions of employment .....	27
5.8 Future of Diocesan Stipends Committee .....	28
5.9 Entitlements of interim vicars .....	30
5.10 Superannuation of Clergy Act 2005 .....	30
6. VICARS — APPOINTMENT, EXTENSION AND REMOVAL .....	31
6.1 Name of parish nominations committee .....	31
6.2 Communicant membership of parish nominators.....	31
6.3 Convening a parish nominations committee .....	31
6.4 Convening a parish nominations committee before the end of an incumbency.....	32
6.5 Confidentiality.....	33
6.6 Membership, voting and unanimity.....	33
LAY DIOCESAN NOMINATORS .....	34
APPOINTMENT AND SELECTION OF DIOCESAN NOMINATORS.....	34
VOTING.....	35
OPTIONS FOR THE LEGISLATION .....	35
6.7 Reporting on "the terms of the agreement" .....	35
6.8 Speed.....	36
6.9 The Archbishop's satisfaction regarding the appointment .....	36
6.10 Oaths and declarations .....	37
6.11 Period as vicar following initial institution .....	37
6.12 Review of priest in charge .....	38
6.13 Extension of incumbency.....	39
6.14 Extension when there is a professional standards complaint .....	41
6.15 Determining the parishes subject to an Archbishop's appointment .....	43
6.16 Inclusion of Archdeacon in decision-making .....	44
7. BREAKDOWN IN PASTORAL RELATIONSHIPS .....	45
7.1 Finding best practice .....	45
7.2 Reconciliation with other processes and proceedings .....	49
8. CLERGY OFFENCES AND DISCIPLINE.....	50
8.1 Offences .....	50
8.2 Diocesan Tribunal .....	50
8.3 Issues regarding Diocesan Tribunal legislation .....	51
RESPONSIBILITIES OF BOARD OF ENQUIRY .....	51
WHETHER THE SYNOD SHOULD ELECT ALL MEMBERS OF THE TRIBUNAL.....	51
ROLE OF THE ARCHBISHOP .....	51

CHARGES ARISING FROM SECULAR PROCEEDINGS.....	52
8.4 Penalties.....	52
9. OTHER MATTERS .....	53
9.1 New areas parishes.....	53
9.2 Recovery of property on vacancy.....	53
9.3 Other housekeeping.....	53
APPENDIX 1 .....	54
APPENDIX 2 .....	56
APPENDIX 3.....	57

## **1. Introduction**

### **1.1 Background**

About 10 years ago the Diocese embarked on a systematic review of all its legislation. Many Acts dated from 1878, and other legislation had been developed incrementally but not rethought or rewritten.

As a result, in addition to various adjustments and the suite of new legislation relating to professional standards, we have enacted new legislation relating to the cathedral governance, parish governance (including Authorised Anglican Congregations), financial governance, Synod standing orders, the interpretation of Diocesan legislation, and the Archbishop in Council.

Of the legislation not yet reviewed, reconsidered and freshly enacted, the largest area remaining relates to how clergy are appointed, licensed, remunerated, disciplined, removed, and allowed to continue in ministry after retirement.

An initial paper covering some of these matters was provided to the 2019 Synod, and it resolved as follows:

That Synod notes the discussion paper concerning legislation relating to the appointment of clergy and the Diocesan Tribunal, and the process for bringing legislation concerning these and other matters relating to clergy to the 2020 session of Synod.

This review is different from all others in at least one important respect. All the other reviews have largely involved the re-consideration of existing legislation, while in the case of the clergy there has never been a suite of legislation that covered all the relevant topics. While there is legislation relating to the appointment of incumbents, stipends, the breakdown of pastoral relations in parishes, and discipline, there is no legislation relating to licensing, or to retirement and ministry after retirement, and only rudimentary references to the employment of assistant clergy. In this regard the Diocese of Melbourne has not sought to match the legislation of other Metropolitan dioceses in Australia or the Church of England.

The Melbourne approach has its advantages, in that it probably better preserves the ecclesiological traditions and assumptions of the Anglican church, but has disadvantages in terms of lacking a clear understanding of what options are available in particular situations, and the rights of clergy, parishioners and the Archbishop.

### **1.2 Principles**

As a reference point for the matters discussed in this paper and any future legislation it is helpful to have some overarching principles. The following are suggested, noting that these too are properly the subject of discussion and revision.

1. The remuneration and other entitlements of clergy should be considered and established in a way that is consistent with the sacrificial exercise of their vocation to sacred ministry.
2. With due allowance for the sacrificial exercise of their vocation, the entitlements and expectations of clergy should neither fall short of, nor exceed, the entitlements and expectations of others with similar qualifications and responsibilities in the contemporary community.

3. Principles, rules and processes should be clearly stated and accessible to anyone affected by them or responsible for implementing them.
4. It is impossible to legislate for every contingency and ill-advised to attempt to do so.
5. The legislation should not unnecessarily allow for the exercise of discretion or delay where the exercise of that discretion or delay would defeat the intention of the legislation, and the exercise of judgment, wisdom and discretion should have safeguards against arbitrariness and caprice.

### **1.3 Process**

The process described in the paper that went to the 2019 Synod was:

It is desirable that the whole of this project be concluded within the life of this 53<sup>rd</sup> Synod, that is, by October 2021. The hope would be to continue to develop proposals over the next few months and consult fully on these early in 2019, with a view to bringing either a Bill or detailed drafting instructions for a Bill to the 2020 Synod. It will be for the Archbishop in Council to judge whether the policy development and consultation is sufficiently mature for a Bill to be brought to the 2020 session of Synod.

This is still the process being followed. This consultation paper is central to it. It will be the basis for consultation. There will be the opportunity for presentations and feedback, and for submissions through the Diocesan website. The preferred course is for a set of proposals to be brought to the next ordinary session of Synod, and whatever is agreed then to be presented as a Bill to the last ordinary session of Synod in 2021.

### **1.4 Use of terms in this paper**

The terms used in this consultation paper correspond to the usage proposed as set out in Appendix 1.

In particular, in this paper:

<b>assistant bishop</b>	means	an assistant bishop under the Assistant Bishops Act
<b>Constitution</b>	means	the Constitution of the Anglican Church of Australia
<b>designated bishop<sup>1</sup></b>	means	an assistant bishop given responsibility by the Archbishop for one or more parishes, Authorised Anglican Congregations or other forms of missional activity
<b>incumbent</b>	means	a vicar with the rights of an incumbent
<b>intentional interim vicar</b>	means	an interim vicar appointed during an interregnum specifically to work with the parish through a period of reflection and discernment

---

<sup>1</sup> Not all assistant bishops are designated bishops. Designated bishops have, and will have, specific responsibilities under the legislation, in relation to parishes and other similar forms of local mission and ministry.

<b>interim vicar</b>	means	a clerk temporarily performing the functions of the vicar of a parish
<b>parish nominations committee</b>	means	the committee responsible for identifying and proposing priests for appointment as vicars
<b>parish nominators</b>	means	the lay members of the parish nominations committee
<b>priest in charge</b>	means	a vicar without the rights of an incumbent
<b>vicar</b>	means	a person in Holy Orders instituted to a parish (for example, as incumbent or as priest in charge)

## **2. The Archbishopric**

The Archbishop is the Diocesan bishop and has a unique and separate role in the life and polity of the Diocese to that of the clergy of the Diocese.

There are three Diocesan Acts directly relating to the office and role of Archbishop: the *Melbourne Archbishopric Act 1980*, the *Archbishop Election Act 1988*, and the *Episcopal Standards Act 2015*. The latter two Acts have particular work to do, and there is no proposal to incorporate them into the new legislation.

### **2.1 Melbourne Archbishopric Act and the title of the new legislation**

The Melbourne Archbishopric Act sets the context for the rest of the legislation in that it sets out the legal basis for the functioning of the Archbishop. It is therefore proposed that it be re-enacted in its current form in the new Act. To do this properly the new legislation should not in its title suggest that the Archbishop is a member of the Diocesan clergy. The proposed title is accordingly "Melbourne Archbishopric and Clergy Bill".

#### **Recommendation**

<b>1.</b>	<b>The new legislation be entitled "Melbourne Archbishopric and Clergy Act 2021".</b>
<b>2.</b>	<b>The Melbourne Archbishopric Act 1980 be re-enacted as part of the new Bill.</b>

### 3. Assistant bishops and archdeacons

#### 3.1 Assistant bishops

The *Assistant Bishops Act 1985* needs to be read with The Assistant Bishops Canon 1966 of the General Synod. In other respects it can be re-enacted.

It should be noted that from a legislative point of view the Diocesan Synod abolished regions and regional bishops. The current regional bishops are actually assistant bishops, but the Archbishop can (and has) established areas of responsibility and corresponding titles and assigned particular assistant bishops to them.<sup>2</sup>

As part of the migration away from the historical concept of regions, it is proposed that the term “regional bishop” across the Diocesan statute book be replaced with “designated bishop”. Designated bishops would still often be responsible for parishes and authorised Anglican congregations within a geographic area, but some might also be responsible for specific missional activity (such as in growth areas). The legislation, and the policy that it represents, will continue to require that there be an identifiable bishop able to discharge the statutory responsibilities in relation to each parish.

#### Recommendation

3.	<b>The Assistant Bishops Act 1985 be re-enacted as part of the new Bill.</b>
4.	<b>The term “designated bishop” replace the term “regional bishop” in all Diocesan legislation.</b>

#### 3.2 Archdeacons

The *Archdeacons (Qualification) Act 1994*<sup>3</sup> provides that a clerk who has been in Holy Orders for at least 6 years is eligible for appointment by the Archbishop to the office of archdeacon in the Diocese. This Act can be repealed and this provision included in the new Bill.

The Archdeacons Canon 1995 of the General Synod provides in section 2:

A Bishop may, subject to compliance with any diocesan legislation, collate a qualified person as an Archdeacon either for a set period or until the next vacancy in the See or otherwise as permitted by diocesan legislation or custom.

It is possible that the current practice in this diocese does not fall under any of the options in section 2 of the Canon. That section provides for two options (a set period, or until the end of the term of the current Archbishop) and the new Clergy Bill could permit a broader range of options. A preferable approach might be to provide that the Archbishop may set the term of the appointment in the licence. This could be for a specified time, or by reference to a specified event (such, if they are a territorial Archdeacon, until they cease to be a vicar within their Archdeaconry).

#### Recommendation

5.	<b>The Archdeacons (Qualification) Act 1994 should be re-enacted as part of the new Bill.</b>
----	---

<sup>2</sup> see *Assistant Bishops Act 1985* s 6A

<sup>3</sup> This Act is reproduced in Appendix 2



6.	<b>The new Bill include a provision that Archdeacons hold office for the term (defined by reference to a period of time or a specified event) specified in their licence.</b>
----	---

#### **4. Parish clergy — conceptual issues: licensing, ministry after age of retirement, part-time incumbents, abandonment**

##### **4.1 Introduction**

There are several categories of clergy to be considered.

###### *(1) Priests instituted to a parish*

The *Interpretation of Diocesan Legislation Act 2016* defines incumbent to mean “a clerk instituted by the Archbishop to a parish”.<sup>4</sup> However, in some provisions, the *Appointments Act 1971* distinguishes between an incumbent and a priest in charge. An incumbent has tenure for 10 years, but when they are instituted to their first parish in this Diocese they are for the first three years termed a priest in charge, and are assessed at the end of that time for their suitability to continue and become the incumbent.<sup>5</sup>

The new legislation should adopt and observe consistency in how terms such as “incumbent” are used. A proposed new set of terms, together with the proposed form of authorization (licence or other authority) is in Appendix 1.

###### *(2) Other clergy licensed to a parish*

There is currently no legislative recognition of stipendiary parish clergy other than incumbents, except incidentally in relation to appointment etc – *Parish Governance Act 2013* ss 27 and 28, and in the provision of the *Diocesan Stipends Act 1991* that allows the Diocesan Stipends Committee to set their stipends and terms of employment when requested to do so by the Synod or the Archbishop in Council.

###### *(3) Clergy licensed to other roles in which they are employed*

There are two categories of clergy licensed to other roles: those who are employed in roles to which they are also licensed (such as chaplains, roles in theological colleges), and those licensed to roles in the administration of the Diocese (such as assistant bishops).<sup>6</sup>

###### *(4) Clergy who are in honorary roles*

This category would include canons of the cathedral and honorary associate priests in parishes.

##### **4.2 Background to licensing and its alternatives**

In 1972 the Diocesan Synod resolved as follows,<sup>7</sup>

###### **6. Licensing of Clergy.**

That, whereas the Church Constitution Act 1854 provides that it shall be lawful for Synod to make such regulations Acts or resolutions as it may deem fit for the licensing of Clergymen by the Archbishop

---

<sup>4</sup> Section 27

<sup>5</sup> Appointments Act s 32

<sup>6</sup> The Dean does not fall exactly into any of these categories.

<sup>7</sup> 1973 *Diocesan Yearbook* pages 334-5 This was a resolution of the whole Synod, making it as directive as any other Synod decision, but not legally binding.

SYNOD NOW RESOLVES

- 1 Licences granted by the Archbishop to Clergymen shall be given under his seal and shall be of two kinds only, namely, General Licences and Specific Licences as hereinafter provided.
- 2
  - (if) A General Licence shall license the holder to minister within the Diocese as and when requested so to do by a Clergyman holding a Specific Licence.
  - (ii) A General Licence may be granted to
    - (a) Clergymen employed by Anglican or Ecumenical societies or agencies who have received the Archbishop's approval of such employment, and
    - (b) Service Chaplains serving within the Diocese.
- 3
  - (i) A Specific Licence shall licence the holder to minister
    - (a) as and when it is seemly so to do by virtue of the office or appointment specified in the Licence, and
    - (b) as and when requested so to do by another Clergyman holding a Specific Licence.
  - (ii) A Specific Licence may be granted to a Clergyman in respect to one or more of the following offices or appointments:
    - (a) Incumbent appointed under the Appointment Act 1971;
    - (b) Member of a Team or Group Ministry;
    - (c) Assistant Curate;
    - (d) Office to which appointment is made by or with the authority of the Archbishop.
    - (e) Chaplain or other officer having spiritual duties appointed by an educational or other institution who has secured the approval of the Archbishop to his appointment as such.
4. A Licence shall take effect only upon the Clergyman making such declarations and oath of canonical obedience as is usual in the particular case.
5.
  - (i) In addition to granting Licences as aforesaid, the Archbishop may in writing under his hand at his discretion issue to
    - (a) retired Clergymen from other dioceses;
    - (b) Clergymen in full-time secular employment not holding a General or Specific Licence; and
    - (c) Clergymen who have accepted appointment to an office without having secured the Archbishop's approval of that appointment

**a Permission to Officiate.**

- (ii) Where a Clergyman retires from full-time service as such in the Diocese of Melbourne he shall be deemed to hold a **Permission to Officiate** issued as aforesaid unless the Archbishop in writing otherwise determines and so informs the Clergyman and the Council of the Diocese.

In considering issues relating to licensing and its alternatives, it is important first to be aware of the *Church of England Act 1854* of the State of Victoria.<sup>8</sup> Section 1 of that Act provides,

---

<sup>8</sup> This is the title used by the State of Victoria in relation to this Act. The Diocese of Melbourne refers to it as 'the Church Constitution Act 1854'

It shall be lawful for any Bishop of the United Church of England and Ireland in Victoria to convene a Synod of the licensed Clergy and the Laity of such Church in his diocese...

Section 7 begins,

Where any Bishop of the said United Church in Victoria shall see fit to convene a Synod as aforesaid such Bishop shall at such time as to him may seem meet previous to the first Synod in his diocese summon thereto the Clergy being Incumbents or licensed by the Bishop within such diocese...

Anglican dioceses in Victoria are therefore required as a matter of law to include in their Synods all clergy who are incumbents or who are licensed by the Diocesan bishop. There would therefore be obvious issues for this Diocese if all clergy wishing or intending to officiate, even after retirement, were licensed.

On the other hand, the Permission to Officiate<sup>9</sup> referred to in the 1972 resolution is (amongst other things) for clergy who have retired. While an incumbency must end when the vicar turns 70, the Diocese of Melbourne does not have a mandatory retirement age for clergy. Even at present, therefore, there is no legal reason not to license clergy aged 70 or more who, for example, hold an "office to which appointment is made by or with the authority of the Archbishop".

The concept of a permission to officiate is also found in English canon law. Canon C 8 provides in section 3,

The bishop of a diocese confers [authority to officiate in any place] on a minister either by instituting him to a benefice or by admitting him to serve within his diocese by licence under his hand and seal, or by giving him written permission to officiate within the same,

#### ***4.3 The age of vicars***

Both the legislation and practice are opaque regarding the possibility of having a vicar aged 70 or more.

Despite section 37(1) of the Appointments Act (which provides that an incumbent ceases to hold that office on turning 70), there is no law preventing a priest of 70 or more being appointed as the incumbent of a parish, or as the priest in charge of a parish, and certainly not as a temporary appointee under s 30. This situation is satisfactory for no-one. It potentially by-passes all the processes, checks and balances contained in the legislation.

There are number of different situations to be considered:

- at what age a vicar must cease to be the vicar of that parish;
- whether as a general rule priests over that age should be able to be licensed as a vicar to a parish; and
- whether a priest over that age should be able to be licensed in particular circumstances.

---

<sup>9</sup> A permission to officiate allows a priest to function as a member of the clergy without appointment to any particular role or with any rights attached to such a role. It is revocable at pleasure, and consequently its revocation does not require disciplinary or similar processes.

## MANDATORY AGE FOR CEASING AS VICAR

It is helpful to have a stipulated age at which vicars of a parish must cease in that role. It provides certainty to the priest, the parish and the Diocese, and in certain circumstances also saves the parish the difficulty of balancing their pastoral concern for the priest with the reality that it may be time for a change. It is therefore proposed that there be no change to the current position that a vicar cease in that role at age 70.

As part of the consultation process consideration could be given to a possible exception, which would be to provide that a priest first instituted to a parish when they were 62 or older was required to retire when they turned 72 (meaning that the vicar might serve a term of between 3 and 10 years).<sup>10</sup> This might encourage priests and parishes to consider an appointment of a priest in their mid-60s by making the period of ministry long enough to be worthwhile. This exception would also recognize that the age of eligibility for the aged pension is increasing. If the age of entitlement to the aged pension is 67,<sup>11</sup> it would be unhelpful to find parishes unwilling to appoint a priest aged 66 because 4 years was not long enough for an effective incumbency. This is recommended for consideration.

In some cases, also, the Archbishop extends the date past the vicar's 70<sup>th</sup> birthday for a period that may relate to local needs or the natural cycle of parish life (for example, if the priest turns 70 a few weeks before a major feast). While retaining the general principle, the legislation should also give discretion to the Archbishop to set a date for retirement that is not more than 6 months from the vicar's 70<sup>th</sup> birthday.

## INSTITUTING A PRIEST AGED OVER 70 TO A PARISH

Except in the circumstances discussed in the next section, it is not recommended that a priest aged over 70 should commence as a vicar in a parish.

### Recommendation

7.	<b>The current requirement that a priest cease to be vicar of a parish on attaining 70 years of age should continue, but with discretion in the Archbishop to extend the date for requirement for up to 6 months where this is appropriate having regard to local needs and circumstances.</b>
8.	<b>The current review should consider establishing 72 as the age of retirement of a vicar of a parish if they were aged 62 or more at the time of their first appointment as vicar of that parish.</b>

## 4.4 Temporary and intentional appointments

There are situations (as is in fact recognized by s 16(2) of the Appointments Act) when it may be necessary or beneficial for there to be a space between the departure of one vicar and the appointment of the next for a parish to go through a process of healing wounds, regrouping or discerning a new future.

---

<sup>10</sup> This proposal relates to priests *first* instituted to a parish, not to the extension of incumbencies. An extension would always be only until the priest turned 70.

<sup>11</sup> as it will be from 1 July 2023

This is not the same as a normal interregnum, where the interim vicar is expected not to make changes and to transmit the parish to the next vicar much as it was when the last vicar left. In the situation now being discussed, the role of the interim vicar is more planned and more active. Further, it may be helped by being explicitly for a stated period of time, rather than simply for the period until the next vicar is instituted.

For the purposes of the following discussion, an interim vicar appointed in such circumstances is referred to as an "intentional interim vicar".

Section 30 of the present legislation provides for temporary appointments, but only by permitting them and providing that the clerk appointed is entitled to all the emoluments and advantages of an incumbent. There is no distinction between short-term appointments as a bridge between vicars and "temporary" appointments that may be indefinite.

The following matters then arise for consideration:

- whether there should be a time limit on temporary appointments that are not permitted by some form of process;
- if so, what that process might be;
- whether, where a temporary appointment is of an intentional interim vicar, that priest may be aged over 70.

Consistent with principle 5, it is undesirable to retain a right to have indefinite temporary appointments. There are essentially three reasons for temporary appointments:

- during a normal interregnum while the next vicar is being identified;
- while a vicar is temporarily unavailable (for example, through ill-health or under criminal investigation);
- during an interregnum because it is in the interests of the parish and the church for there to be a gap.

A normal interregnum needs to come to an end, and the ways in which this might be done are discussed in section 5.8. These will continue to be supplemented by the procedure in sections 27 and 28 of the present Appointments Act, which provide that after a certain period (at present 6 months) if no appointment has been accepted, the Archbishop may convene a special meeting at which someone other than the designated bishop presides, and if an appointment has not been made within a further 3 months the appointment vests in the Archbishop.

The situation of temporary unavailability will be addressed partly through the proposal in recommendation 14, or through a professional standards process.

Where there is neither a normal interregnum nor a temporary absence of the vicar, the situation should be dealt with through the expanded operation and use of section 29 of the Appointments Act. Section 29(2) gives the Archbishop the right to "fill the vacancy" in a parish not only on every third vacancy, but also if the Archbishop in Council makes a declaration under sub-section (4). Section 29(5) lists the matters the Archbishop in Council must take into account, which include "such other factors as the Archbishop in Council thinks fit". The Archbishop in Council can also revoke such a declaration. A possible reform would be to allow it also to make a declaration for a limited period not exceeding 2 years.

On this approach, the legislation would contain two options:

(1) the Archbishop in Council could make a declaration of suitability for an intentional interim vicar (for a specified period up to 2 years, or for 2 years) in relation to the parish, opening the way for the Archbishop to make an appointment as provided for in the section (including consultation with the parish nominations committee), with the person being licensed as a priest in charge (and the licence therefore revocable at will);

(2) the Archbishop would retain the right to make a temporary appointment under s 30, but for a period not more than 15 months. (If it was desired to continue that priest after 15 months the process under (1) would be followed.) The period of 15 months allows for a further 3 months after the mandatory appointment of a different chair of the parish nominations committee. This would cover both normal interregnums and where the vicar was sick, suspended, on extended leave or similarly unavailable.

This approach would balance the various considerations already referred to, and would build on options already provided for in the legislation.

Where a declaration had been made under option (1) the priest appointed as priest in charge could be aged over 70. This exception to the general principles discussed in the previous section recognizes that the pool of priests both able and available as successful intentional interim vicars is relatively small, and that some of the wisest and most skilled priests for this role will in fact be aged in their late 60s or in their 70s. The process described in option (1) would be clearly distinguished from that of an interim vicar between vicars (in that it would involve a declaration by the Archbishop in Council), meaning that the circumstances in which the intentional interim vicar would be licensed are clearly differentiated.

Option (1) should also allow for a period in which the normal process of convening the parish nominations committee or seeking a vicar are suspended: for example, until 6 months before the expiration of the period determined by the Archbishop in Council.<sup>12</sup>

Where there is to be an intentional interim vicar appointed, the archdeacon and parish nominators should be consulted regarding that appointment. This is because the reason for the appointment is to allow review and discernment, and it is self-evidently necessary that the person appointed be able to work with the parish in question for that purpose.

### **Recommendation**

<b>9.</b>	<b>The Archbishop's ability to appoint an interim vicar should take two forms—</b> <b>1. for up to 15 months without any associated process;</b>
-----------	---

---

<sup>12</sup> A detail to be worked through is how long after the conclusion of the period declared by the Archbishop in Council the appointment process should take. As noted elsewhere, it may take longer than six months to fill a vacancy, and therefore in effect at the end of the period of an intentional interim vicar a further "ordinary" interregnum may occur. This would require another "ordinary" temporary appointment, and the usual processes to ensure a timely completion of the nominations and appointments process.

	<b>2. for any period up to two years following a declaration by the Archbishop in Council of suitability for an intentional interim vicar, in which case (a) the Archbishop may appoint an intentional interim vicar; (b) the designated bishop and parish nominators<sup>13</sup> must be consulted regarding the priest to be appointed; (c) the Archbishop may, at the Archbishop's discretion, licence the priest as an intentional interim vicar (revocable at will); (d) the incumbency process is suspended until 6 months before the expiration of that period; (e) the priest appointed as intentional interim vicar may be aged 70 or more.</b>
--	---

#### ***4.5 Incumbents who are not full-time***

It has been the practice to appoint vicars as incumbents only to parishes that could pay a full stipend—that is, parishes that cannot pay a full stipend cannot have an incumbent. This appears to be based on the former English practice of appointing a rector to a living.

The contemporary situation in England is set out in Mark Hill, *Ecclesiastical Law* (3<sup>rd</sup> Edn).

Parochial clergy fall into two categories: beneficed and unbeneficed. A benefice is a freehold office, the hold of which is known as 'the incumbent', but may also be styled 'rector' or 'vicar'. The incumbent is a corporation sole. And has a freehold interest in the emoluments of the benefice until retirement or vacation of the benefice... (at 4.17)

Unbeneficed clergy comprise all those who have no freehold office: priests-in-charge of parishes, rectors and vicars in team ministries, assistant curates, chaplains, lecturers and preachers, ministers of chapels and retired clergy. In order to be able to officiate, they require the licence or permission of the bishop of the diocese... (at 4.29)

It is immediately clear that in the Diocese of Melbourne *all* parish clergy are unbeneficed in terms of this taxonomy.

It is also important that, even in the English context, the existence of a benefice was no indication of the value or adequacy of the benefice, which could deliver an income ranging from bare subsistence to substantial wealth. It is in one way wrong to describe a priest appointed as vicar of a parish in this diocese as being part-time, as there would seldom if ever be a restriction on the amount of time they could chose to spend on parochial duties—rather, "part-time" means "part-paid", which is exactly the same as having a poor living or benefice rather than a handsome one. (There is an important difference, however: a priest in a part-time or part-paid parish must be permitted to have other sources of remuneration during times not required for work in the parish.)

Given, then, that all our clergy are unbeneficed, and that some parishes can pay the full stipend and some can only pay a fraction of it, these are not reasons to prevent a parish having an incumbent who is paid a percentage of a full stipend.

This is not to say that it is desirable that any parish have a vicar who is less than full time. Perhaps it is now difficult to have a parish with only a single full-time priest, and perhaps having a part-paid vicar enables parishes to continue that should be closed or reviewed. This paper, however, is about the clergy, not about the health of parishes.

---

<sup>13</sup> and the archdeacon – see recommendation 31



It might also be argued that a parish that can support only a part-paid vicar may not be able to sustain that payment for 10 years. However, that is true of many full-time parishes also. In the modern world and modern church there are few parishes (at least sustained only by live giving) that can guarantee that they will be able in 10 years' time to afford the same ministry team that they do now. It is just as plausible to argue that a parish that appears able to sustain a part-paid vicar now is more likely still to be able to do so in 10 years than a parish that is at the very limit of its capacity in having a vicar full time.

All these considerations go to the merits of part-time parishes, whereas the current question is concerned with whether, if there is a parish served by a part-time priest (which, as a matter of fact, many are), there is benefit in a policy that that priest can never be the incumbent of that parish. The benefits would be the same as the benefits of incumbency in relation to any parish priest: certainty for the priest and for the parish, recognition that the priest is leading the parish in the fulfilment of its Mission Action Plan and has the authority and space to do so, confidence for parishioners in committing to that same direction under that same leadership.

The proposal for consideration is therefore that it should be possible for a parish to have an incumbent paid at less than the full stipend, provided that the time proportion is agreed and the parish demonstrates its capacity to pay the agreed stipend.

Any proposal to allow part-time appointments of incumbents would have to include provision for related matters, such as use of the vicarage, and meeting the cost of associated services and utilities.

In order to shorten the timing of the reviews of how the priest and parish are faring and the future of both the incumbency and the parish, such an appointment should be for less than 10 years: an initial period of 5 years is suggested. A number of years less than 10 is being suggested because full-time incumbency should still be considered normative. Even if for particular reasons only part-paid incumbency remains possible after 5 years, it is healthy for the parish, the priest and the Archbishop and designated bishop to be clear about why this is so and how the parish is situated.

### **Recommendation**

<b>10.</b>	<b>The new Clergy Bill should provide for the possibility of clergy licensed to parishes less than full time to be licensed as incumbents, for a period of 5 years with the possibility of extension for further periods of 5 years.</b>
------------	--

### **4.6 Incapacity**

The matter of physical or mental incapacity may arise in the context of a possible breakdown in pastoral relations (see chapter 7), but need not do so. Section 21 of the *Melbourne Archbishopric Act 1980* provides for a process for establishing whether the Archbishop is medically unable to continue, and for the superannuation of the Archbishop if it is concluded that that is the case. An analogous process should be included in the legislation in relation to clergy holding licences that are not terminable at will. It should be possible to initiate the process only by the Archbishop on the recommendation of at least two of a designated bishop, the relevant archdeacon or the MADC.

## Recommendation

11.	<b>The new Clergy Bill should provide for a process to determine whether clergy holding licences that are not terminable by the Archbishop at will are temporarily or permanently unfit on the grounds of physical or mental incapacity, the process being commenced by the Archbishop on the recommendation of at least two of a designated bishop, the relevant archdeacon or the MADC, and to allow the Archbishop to suspend or determine a licence at the conclusion of that process.</b>
-----	--

### **4.7 Abandonment**

A matter that has been raised for consideration is that of abandonment, that is, where a member of the clergy ceases to perform the duties of their office. In secular employment law, abandonment describes an employee not attending their workplace for a period of time. Abandonment is not the same as attending and then doing no work.

There is already an offence in the Offences Canon 1962, “habitual or wilful neglect of ministerial duty after written admonition in respect thereof by the Archbishop”, and it is suggested that this adequately describes (as well as going beyond) the concept of abandonment. A member of the clergy who had received such an admonition and continued to neglect their duties would be charged and tried before the Diocesan Tribunal in the usual way.

It might be objected that this could be a drawn-out process where a member of the clergy has (for example) moved overseas without any permission. While it is not currently a recommendation, consideration could be given to creating an additional Diocesan offence covering these situations. This could allow a process of suspension pending the hearing of a charge.

In the church, abandonment can also be used in another way, to refer to clergy who have abandoned the Christian faith, or the church. They can, of course, resign their orders.<sup>14</sup> If they do not, the Constitution of the national church provides that the diocesan tribunal has jurisdiction to hear and determine a charge of breach of faith,<sup>15</sup> which is defined as including the obligation to hold the faith.<sup>16</sup> Given that this charge is available, and the unlikelihood of this situation arising often, it is not recommended that the legislation seek to address this issue further.

### **4.8 Retirement and licensing of priests aged 70 and over generally**

The Diocese of Melbourne has no legislation generally applicable to all clergy regarding an age of retirement. Section 37(1) of the Appointments Act states that the incumbency of a priest becomes vacant on the priest's attaining the age of 70 years, and s 5 of the *Melbourne Archbishopric Act 1980* has a similar provision regarding the See of the Archbishop.

---

<sup>14</sup> see Holy Orders (Removal from exercise of Ministry) Canon 2017s 3

<sup>15</sup> section 54(2)

<sup>16</sup> section 74(1)

A straightforward approach is used in the Diocese of Perth. Section 1 of the Clergy Retiring Age Statute 2003 provides:

Every bishop, priest or deacon in office at the age of 70 years shall be deemed to have retired from and to have relinquished that office, but is thereafter eligible to be licensed as a *locum tenens* in any office on terms indorsed on the licence.

This means that a cleric aged 70 or more can be licensed, but only to act in a role.

The Diocese of Adelaide has a similar approach, but with two options post-retirement. The Retirement Ordinance 1988 provides the Bishop and every member of the clergy holding any office mentioned in his or her licence shall retire from such office upon attaining the age of 70 years,<sup>17</sup> and then provides:

Nothing contained in this Ordinance shall prevent a retired member of the clergy (whether retired pursuant to the provisions of this Ordinance or otherwise) from:

- (a) performing any functions pursuant to a general licence granted by the Bishop; or
- (b) being licensed as *locum tenens* of a parish or other office for a period not exceeding six months.

This provision does not suggest any option other than a licence.

The Diocese of Sydney goes further:

A Minister who has reached the Retirement Age [the age of eligibility for the aged pension] may be licensed to such position in the Diocese as the Archbishop may determine provided that the terms of the licence are such that, after giving the Minister opportunity to show cause, it may be revoked upon not less than 30 days notice being given to the Minister.<sup>18</sup>

This provision would seem not to apply to all clergy, however, as "Minister" has a restricted definition.

The Diocese of Brisbane does not have any provision relating to retirement. Section 2 of the Licensing of Clergy Canon provides that no person shall be allowed to officiate in any church chapel or other building consecrated dedicated or otherwise set apart or used for the worship of God according to the rites and ceremonies of the Anglican Church of Australia without being first approved or thereunto licensed by the Archbishop. The Canon does not state what form an approval (as distinct from a licence) might take.

There are therefore two questions:

- whether to make specific provision for retirement, and
- whether to allow specifically for licensing to new offices after the age of retirement.

## RETIREMENT

It would be consistent with the principles of clarity and consistency to follow the Dioceses of Adelaide, Perth and Sydney in providing that all clergy licensed to an office are deemed to have relinquished that office on turning 70 (subject to recommendation 9 above).

---

<sup>17</sup> The Retirement Ordinance 1988 s 3. (Section 2 requires each priest on turning 63 and again on turning 68 to discuss with the Archbishop various matters relating to their prospective retirement.)

<sup>18</sup> Retirements Ordinance 1993 (Dio Sydney)

## LICENSING AFTER RETIREMENT

Consideration should be given to the approach used in Adelaide, Brisbane and Perth, to the extent of allowing the licensing of clergy to specific roles or offices (other than for parish ministry), in addition to the default position of having permission to officiate.

There is also no legal reason why the Archbishop of Melbourne cannot already license a priest of any age to an office within the Diocese. Paragraph 3(ii) of the 1972 resolution refers to offices to which appointment is made by or with the authority of the Archbishop and to chaplains or other officers having spiritual duties appointed by an educational or other institution who has secured the approval of the Archbishop to his appointment as such. If a cleric over 70 holds a clear and defined office there is no reason in principle why they should not be licensed to that office.

### **Recommendation**

<b>12.</b>	<b>The new Bill should provide that all clergy licensed to an office are deemed to have relinquished that office on turning 70 (except in the case of vicars if specific rules apply).</b>
<b>13.</b>	<b>The new Bill should state explicitly that the Archbishop may give a general or specific licence to any person in Holy Orders except for parish ministry.</b>

## **5. Parish clergy— employment status, remuneration and other conditions**

### **5.1 Introduction**

This chapter explores two issues. The first is whether clergy not already employees should now be considered to be employees.

The second is how their remuneration and other conditions should be determined. At present the remuneration of full-time vicars is set by the Diocesan Stipends Committee. The Diocesan Stipends Committee also purports to set remuneration and some related conditions for other clergy and some laity, but the legal basis for this is not clear. Other working conditions are set out in Diocesan policies, but these are only guidelines, and have at best very little legal basis.

If clergy are employees, then they would be employed under an enterprise agreement, and the Diocesan Stipends Committee could not finally determine anything, removing its key function. It follows that consideration of how remuneration and other work conditions are set, and who sets them, will be contingent on the prior issue of whether clergy are employees or independent office-holders.

### **Employment status**

#### **5.2 Current law**

Section 10(3) of the Melbourne Anglican Diocesan Corporation Act 2015 provides:

Unless expressly so provided in an Act or unless required by law, the Diocesan Corporation must not act or purport to act as the employer, within the meaning of that expression under the general law, of a person in Holy Orders.

While this sub-section preserves the traditional position that clergy are office-holders, not employees, it also acknowledges that both Synod legislation and the civil law may treat clergy as employees. The traditional position is not absolute.

Already there are some licensed clergy who are employees, such as school chaplains. This is an appropriate time to consider whether other categories of clergy should also be employees in the full and normal sense of the word.<sup>19</sup>

#### **5.2 Clergy other than vicars<sup>20</sup>**

For many assistant parish clergy their experience is hard to distinguish from the experience of employment for other similarly-qualified professionals. They work an agreed number of days or hours per week in return for fixed and externally-determined remuneration, they have

---

<sup>19</sup> The following discussion assumes that assistant clergy in parishes are not already employees. It is possible already that a court would find that they were, notwithstanding the church's own views and declarations.

<sup>20</sup> This paper does not treat particular assistant clergy differently from others: for example, curates, or distinctive deacons. While in practice they may have different periods of tenure or conditions of employment, from a legislative point of view all that is necessary is the framework within which these matters are determined or permitted. It is possible, however, that curates should be seen as Diocesan employees completing their post-ordination preparation rather than as employed in a parish in the same way as other assistant clergy. One consequence of such an approach would be to create a context in which the vicar was accountable to the Diocese for whether the curate had satisfied certain learning and professional objectives.

recreation leave, most or all of the equipment and facilities that they need are provided by the parish, they are broadly managed and supervised, but (depending on their experience and seniority) with scope for professional discretion and creativity. Section 28(5) of the *Parish Governance Act 2013* already provides that the vicar is responsible for "supervising and managing" such clergy.

From the point of view of these clergy there would be advantages in having the status of employees: for example, they would have the benefit of laws relating to sick leave, parental leave and unfair dismissal. It would also support and reinforce the church's existing obligations to provide a safe system of work.

From the perspective of the church as an organization there would be little lost (in that the change of status simply regularizes a practical reality), and it would increase the opportunity for common conditions of employment, reducing local variability and inconsistency.

Such a change could have significant ramifications, and needs to be carefully considered, always bearing in mind that it is possible that, were the matter tested, such clergy would already be found to be employees by the secular courts. One area that might present a challenge (as it does elsewhere in the workforce) is when it is decided that a priest who has been (say) the senior associate in a parish for 20 years is no longer wanted in the role. That said, the common secular pathway of a period of notice with a redundancy payment might be equally as appropriate for such a priest as it would be for (say) a social worker in a church agency.

If assistant parish clergy were to be considered employees, further questions might also arise regarding the extent to which the law relating to discrimination in employment should apply. For example, could a priest be refused employment in a parish (or in the Diocese) on the basis of their sex, gender, sexuality or age?

From an ecclesiological point of view it is not clear what principle is being defended in the case of assistant parish clergy. If it is that every cleric should have the scope to pursue their calling as they discern that they should, guided by prayer, the Holy Spirit and their bishop, it has to be doubted that that principle is reflected in the lived experience of assistant clergy in parishes.

#### FIXED-TERM APPOINTMENTS

A further question is whether assistant parish clergy should also be subject to fixed-term renewable appointments. This approach would certainly align with increasingly common practice in (for example) secondary and tertiary education, although in some situations redundancy entitlements must still be paid if the employee's contract has been renewed a number of times. At the same time,, the increased uncertainty and vulnerability for the employee, and the rebalancing of the relative power of the employer and employee have been seen by some as undesirable.

It is a matter for further consideration whether this would be a desirable approach to adopt. It would certainly increase the likelihood that more uniform and transparent standards would be imposed on MADC and vicars in relation to management practices, performance reviews and transparency in processes.

### **5.3 Who would be the employer?**

There cannot be an employee without an employer, and the question then arises who would be the employer of assistant clergy.

This question is especially relevant when it comes to matching decision-making with financial and other consequences. For example, what is to happen if one person (such as the Melbourne Anglican Diocesan Corporation) is the employer and another person (such as the vicar) makes decisions with financial consequences? This question could arise equally if the MADC were required to provide continuity of employment when a parish dispensed with a cleric's services.

To a certain extent, of course, this question is conceptually no different to the situation already with laity employed in parishes. If an organist or an Authorised Stipendiary Lay Minister (ASLM) is no longer required in one parish, is MADC obliged to find them employment in another parish? The answer is more likely to be that they would be considered redundant in their current role (that is, as the organist or ASLM in their particular parish) and entitled to an appropriate redundancy payment. The more challenging legal question is whether an organist or ASLM is "redundant" simply because the vicar doesn't like them or their approach to their role. It must be repeated, however, that this is an existing issue, not a new one.

There are already provisions in the *Melbourne Anglican Diocesan Corporation Act 2015* and the *Parish Governance Act 2013* relevant to this discussion.

The relevant provisions in the Parish Governance Act are these:

#### **27 Appointments generally**

- (1) The parish council may determine amounts to be available for the remuneration of the holders of any role, office or position in the parish and, subject to the **Diocesan Stipends Act 1991**, must determine the remuneration payable in each case.

...

#### **28 Appointments of clerks and authorised lay ministers**

- (1) The Archbishop alone may appoint—
  - (a) a person in Holy Orders to a stipendiary role, office or position in a parish; and
  - (b) a stipendiary authorised lay minister in a parish—and alone may suspend or terminate that appointment.
- (2) An appointment under sub-section (1) is on the terms and conditions determined by the Archbishop.
- (3) The vicar is responsible for recommending to the Archbishop the appointment of a person under sub-section (1) and the terms and conditions of that appointment.
- (4) The Archbishop must consult with the vicar before exercising the power of appointment, suspension or termination unless it is impracticable to do so.
- (5) The vicar is responsible for supervising and managing a person appointed under this section.
- (6) Nothing in this section applies to the appointment of a person as the vicar or derogates from the inherent powers or authority of the Archbishop.

From these provisions it is clear that:

- the parish council decides what remuneration is available for everyone holding a remunerated position in the parish,
- the Archbishop appoints all clergy on the recommendation of the vicar and removes them, after consultation with the vicar, and
- the vicar is responsible for their supervision and management.

It is also important to note, however, that it is the Archbishop, not the vicar, who has the power to suspend or terminate the appointment of a member of clergy in a parish.

The MADC Act provides:

**9 Appointments etc to be made on behalf of Diocesan Corporation.**

- (1) An office holder or body having authority under any Act of the Synod in relation to a prescribed role—
  - (a) to appoint a person—
    - (i) to the role; or
    - (ii) temporarily to perform the duties of the role;
  - (b) to suspend or dismiss a person; or
  - (c) otherwise to do any other lawful act in relation to a person—

is conferred on that authority and exercises it on behalf of the Diocesan Corporation and is to be taken to have acted on its behalf.
- (2) Schedule 2 lists the prescribed roles.

**10 Obligations of the Diocesan Corporation**

- (1) The Diocesan Corporation must act as the principal of each office holder or body referred to in section 9(1).
- (2) The Diocesan Corporation in relation to a prescribed role may only act through the agency of the office holder or body referred to in section 9(1)—
  - (a) to appoint a person—
    - (i) to the role; or
    - (ii) temporarily to perform the duties of the role;
  - (b) to suspend or dismiss a person; or
  - (c) otherwise to do any other lawful act in relation to a person—

to the intent that the Diocesan Corporation shall not be at liberty, except to ensure compliance by the Diocesan Corporation with any applicable law, to direct the office holder or body in the appointment, suspension or dismissal of that person or in the doing of any other act in relation to that person.

The effect of these provisions is that the MADC as an employer always acts on the directions of the person with the power of appointment, suspension or removal. In the case of the clergy, this is always the Archbishop.

Even so, the vicar of a parish clearly influences the decisions and actions of the Archbishop and the MADC, and can affect the risk associated with a particular appointment, including changing work conditions, the requirements of the role, leave and so on.



The most straightforward approach to the distribution of risk is to locate it with the body making the decisions, that is, the parish. Already section 33(1) requires the parish council to prepare a budget, which is to provide for all the payments that must be made under s 35(1)<sup>21</sup>, which includes the amount of remuneration determined under s 27(1). To locate the risk closer to the decision-maker, the Bill should provide that the parish from its funds indemnifies the MADC against any costs incurred by it arising from a decision made by the vicar in the direction, supervision or management of a member of the clergy employed in the parish.

#### **Recommendation**

<b>14.</b>	<b>Assistant clergy in parishes should have the legal status of employees.</b>
<b>15.</b>	<b>The new Bill should provide that the parish from its funds indemnifies the MADC against any costs incurred by it arising from a decision made by the vicar in relation to the direction, supervision or management of a member of the clergy employed in the parish</b>

#### **5.4 The vicar as an employee**

The foregoing discussion requires consideration of whether vicars should also be considered to be employees.

The situation here is not as clear. Vicars are not managed and are not accountable for how they use their time or discharge their responsibilities. In some ways this is desirable, in that there are advantages to having each vicar discern what form of ministry, mission and leadership is most appropriate for their particular parish, in conjunction with the parish council. Having those matters directed or determined by the archdeacon or designated bishop could inhibit diversity, creativity and responsiveness to local needs and opportunities.

It is also uncertain what might be the implications of such a change of status: for example, would MADC be obliged to keep all clergy in paid employment, given a shift from the parish as the locus of organization to the Diocese?

At the same time, there would be advantages in having the same employment status for all clergy who do not have some other employer (such as school chaplains). It would encourage a universal system of setting expectations and reviewing performance, it would make the conditions of employment explicit and transparent, and would mean that the terms of employment were the same across the diocese.<sup>22</sup>

The appropriate recommendation at this point is that the current legislative review reach a view and incorporate it into the legislation regarding whether parish clergy should be considered employees for all purposes.

#### **Recommendation**

<b>16.</b>	<b>The current review should explore actively whether it is desirable to treat vicars as employees for all purposes and what the legal and management implications would be.</b>
------------	--

<sup>21</sup> Parish Governance Act s 33(3)

<sup>22</sup> The Archbishop already has the power to direct the manner in which any licensed clerk discharges the functions and responsibilities of the role, office or position to which they are licensed: see *Melbourne Archbishopric Act 1980* s 15(2).

### **5.5 Casual and occasional ministry**

As in the workforce generally, it would continue to be possible (and usual) for clergy to be remunerated as contractors, for example, in relieving when the vicar is on leave or in undertaking pastoral visiting for a few hours a week.

## **Determining remuneration and associated conditions**

### **5.6 Role of Diocesan Stipends Committee**

The main Act relating to the remuneration and working conditions of clergy is the *Diocesan Stipends Act 1991*.

This Act establishes a Diocesan Stipends Committee, which by s 5 of the Act has the following powers and functions:

- (a) Not less than once in every half year to enquire into and to make determinations as to the minimum stipends allowances and other remuneration which, subject to this Act, are to be paid to clergy who render full time service in relation to parishes;
- (b) Whenever so required by resolution of Synod or of the Archbishop in Council to make determinations as to the stipends, allowances and other remuneration of any other persons, whether clerical or lay, engaged in activities for or on behalf of the Anglican Church in the Diocese of Melbourne; and
- (c) Whenever so required by resolution of Synod or of the Archbishop in Council to make determinations as to any of the working conditions of any clergy or lay persons engaged in activities on behalf of the Anglican Church in the Diocese of Melbourne.

This means that the Diocesan Stipends Committee *must* determine the minimum stipend for full-time incumbents and other full-time parish clergy. With regard to other clergy and laity engaged in activities of the Anglican Church in the Diocese, it *may* determine stipends and remuneration, and also *may* determine working conditions, but only if required to do so by the Synod or the Archbishop in Council. The Committee has no authority to determine what should be paid to part-time incumbents, part-time curates and other assistant clergy, locums and ASLMs unless required to do so by a resolution of the Synod or the Archbishop in Council.

It is understandable why it might have been considered appropriate to provide the Diocesan Stipends Committee with one mandatory function in 1991 and allow for it to be given additional functions as things went on, but, if it were to be retained, it would now be preferable to establish its responsibilities more clearly.

There are a number of reasons for this. First, the Diocesan Stipends Committee has in fact made determinations in relation to matters covered by paragraph (b) even though there seems to be no resolution of the Synod or the Archbishop in Council authorizing it to do so. While this might demonstrate that there is a need for a determination in these matters, the fact that the committee's determinations are unchallengeable makes it unsatisfactory for it to be making them without legal authority.

Secondly, the work of the Diocesan Stipends Committee could overlap with other mechanisms and the powers of other bodies. For example, the employment conditions of

laity employed in parishes and at a diocesan level may well be covered by industrial agreements under laws of the Commonwealth, and the option of having those conditions determined by the Diocesan Stipends Committee should not be left open. Conversely, section 11 of the Diocesan Stipends Act refers to “parish councils and...other persons or bodies responsible for prescribing stipends, allowance, remuneration or working conditions for clergy or lay persons who render service...”, which alludes to the possibility of parish councils determining the working conditions of incumbents and other parish clergy even though that power is not explicitly conferred on them by other legislation.

Thirdly, with the creation of the Melbourne Anglican Diocesan Corporation, it is becoming more important to be clear where such significant responsibilities lie, and for the Synod to make that determination.

### ***5.7 Other conditions of employment***

Section 23(2) of the Parish Governance Act provides that the churchwardens must ensure that any leave taken by the vicar is consistent with the terms of the vicar’s appointment.

This raises the question of what are “the terms of the vicar’s appointment”. These may or may not be the same as the “working conditions” referred to in s 5 of the Diocesan Stipends Act.

As has already been discovered in the context of workers’ compensation, most vicars and some other parish clergy do not work a fixed number of hours between fixed times. The same could be said of members of other professions and occupations with a role in serving people at times when their lives are unpredictable (such as medical practitioners, police and plumbers), especially in country towns.

There can be uncertainty in areas other than the number and distribution of hours worked, however: for example, whether the work of the vicar should include time for professional development, and if so, how much, and who should decide that the particular professional development is appropriate; whether it should include other roles within the church (such as attending General Synod or membership of the council of an Anglican private school not associated with the parish); and whether the time spent in earning surplice fees counts as time spent as the vicar.

It might be said that the members of most professions have discretion in when they do their work and allocate their time, and for those who are self-employed this is largely true. It is much less true, however, for members of professions who have a guaranteed income; or, to make the point the other way, a member of a profession who chooses a congenial work-life balance will expect their chosen balance to be reflected in their remuneration.

It should also be noted that the context for consideration of these matters is not the same context as informed consideration of them 50 or 100 years ago. The real value of stipends has increased in that time, and many parishioners are all too familiar with the realities of the modern employment market.

Since 1991 the Diocesan Stipends Act has allowed the Diocesan Stipends Committee to determine the working conditions of any clergy and laity engaged in activities on behalf of the Anglican Church in the Diocese if required to do so by a resolution of the Synod or of the Archbishop in Council. At the very least, this means that for 30 years it has been recognized

by the Synod that it might be appropriate for the committee to determine the working conditions of clergy.

The question now is whether the Synod should adopt a process by which these working conditions will be determined.

It should be noted that there is a document entitled "A Manual for Clergy in the Anglican Diocese of Melbourne".<sup>23</sup> This document provides a general guide to various aspects of the organization of the Diocese, and includes guidance regarding various aspects of the engagement of clergy. It includes a detailed discussion of what is considered normative regarding matters such as leave, remuneration and professional development. The detail in this document demonstrates the need for an authoritative and uniform approach to these matters. At the same time, there is no legislative basis (and probably no legal basis) for most of the requirements set out in the document, and no defined process for who determines what they should be.

### **5.8 Future of Diocesan Stipends Committee**

Although it has been suggested above how the legislation relating to the Diocesan Stipends Committee might be improved, the prior question must be whether the Diocesan Stipends Committee should continue at all.

This question would certainly arise if all clergy were employees, as a committee established by Synod legislation could no longer be given the function of finally determining the remuneration or working conditions of those employees. Those would be determined under Commonwealth industrial law in the same way as for other employees.<sup>24</sup>

Even if some clergy retained their status as office-holders, however, the role of the Diocesan Stipends Committee needs to be considered in relation to them, and the following discussion concerns that possibility.

The situation in the other metropolitan dioceses is as follows:

<b>Diocese</b>	<b>Responsibility for remuneration and conditions</b>	<b>Legislation</b>
Sydney	Standing Committee. Non-binding guidelines, except that minimum remuneration must be paid	none
Brisbane	Regulations made by Archbishop in Council	Parishes Regulation Canon ss 4(2)(d) and 27, Licensing of Clergy Act s 5
Adelaide	Diocesan Council	The Stipends Ordinance 1980
Perth	Diocesan Council	"By virtue of the <i>Diocesan Council Statute 1888-2002</i> , Diocesan Council is the Standing Committee of Synod and when

<sup>23</sup>

<https://parishportal.melbourneanglican.org.au/library/ClergyManual/Clergy%20Manual%202nd%20edition%20November%202019.pdf>

<sup>24</sup> As already noted, it may already be the case that assistant clergy are employees and therefore governed by Commonwealth law rather than determinations of the Diocesan Stipends Committee.

		Synod is not in session acts for and on behalf of Synod in all matters appertaining to the "temporal affairs" of the Church in the Diocese. In this context, "temporal affairs" includes the fixing of clergy stipends and allowances, arrangements for clergy housing and office accommodation, and generally, all pecuniary arrangements relating to parochial and non-parochial clergy."
--	--	---

It would be possible to retain some guidelines in the legislation regarding how remuneration and working conditions are to be determined and give to the Archbishop in Council responsibility for determining those matters according to the guidelines.

Considering the wide range of matters covered by the Manual for Clergy and the increasing complexity and interrelationship of stipends, allowances, housing, different types of leave, there needs to be a single point where all these matters are determined, and the Diocesan Stipends Committee cannot provide the comprehensive approach needed. While under section 5A of the Diocesan Stipends Act the committee is required to have regard to "any submissions made from the Provincial dioceses and other interested parties to the Committee", there is no provision for any form of industrial negotiation, or for dialogue between any of the parties with each other, in which the committee is involved or that it needs to take into account.

Further consideration needs to be given as to how to distribute responsibility between the Archbishop in Council and the MADC. On the one hand, the Archbishop in Council is responsible for policy matters, and has the ultimate responsibility for the secular affairs of the Diocese. On the other hand, the MADC is the employer and also has specific knowledge and experience in relation to all the matters that need to be covered. It is inherent in its role that it provide expertise and advice in relation to the terms on which clergy are engaged or employed. As a placeholder for further discussion, there is a recommendation that the Archbishop in Council have before it the written advice and recommendation of the MADC before making any decision in relation to any determination.

In addition, the Archbishop in Council might seek input from one of its committees, whether specifically created for this purpose, or one that is part of its general governance. This is a matter for the Archbishop in Council and need not be stipulated in the legislation.

### Recommendation

17.	<b>The Diocesan Stipends Committee should be abolished, and the Archbishop in Council should have responsibility for determining the remuneration and other conditions of engagement or employment for all clergy who are not employees and who are paid through the MADC, subject to principles set out in the legislation.</b>
18.	<b>At the time of making any determination in relation to the remuneration and other conditions of engagement or employment for clergy, and at the time of considering the position of the Diocese in relation to industrial negotiations, the</b>

	<b>Archbishop in Council must have before it the written advice and recommendation of the MADC.</b>
--	---

### **5.9 Entitlements of interim vicars**

Section 30(2) of the Appointments Act provides as follows in relation to clerks appointed when a parish is vacant or the vicar suspended:

A clerk so appointed shall, during the term of appointment, be entitled to all the emoluments and advantages of the parish in the same way as if the clerk were the incumbent of the parish.

This sub-section is too prescriptive. There should be an allowance for some other arrangement than *all* the emoluments and advantages of the parish. It is quite possible that everyone concerned may be happy for the priest appointed to work a reduced number of days a week, or not to have the use of the vicarage, and there is no obvious policy reason to require an arrangement that suits no-one.

The section should require only that the priest be entitled to those emoluments and advantages as are agreed at the time of the appointment by the priest, the parish and the Archbishop, as varied with the agreement of all of them from time to time.

#### **Recommendation**

<b>19.</b>	<b>An interim vicar should be entitled to the emoluments and advantages agreed as between them, the parish nominators and the Archbishop at the time of their appointment, as varied with the agreement of all of them from time to time.</b>
------------	---

### **5.10 Superannuation of Clergy Act 2005**

The *Superannuation of Clergy Act 2005* is a short Act creating the mechanism for a superannuation scheme for clergy. It should be re-enacted in the new Bill.

#### **Recommendation**

<b>20.</b>	<b>The <i>Superannuation of Clergy Act 2005</i> should be re-enacted in the new Bill.</b>
------------	---

## **6. Vicars — appointment, extension and removal**

There is no proposal to change the basic and familiar elements of the appointments process, but various specific matters need to be considered.

### **6.1 Name of parish nominations committee**

This paper suggests a wider role for the members of the incumbency committee than just choosing an incumbent. Even now they have a role in choosing every vicar, and in considering the transition of a vicar from priest in charge to incumbent. In future they are expected to be consulted, at least potentially, on more matters.

It is therefore proposed that the term “parish nominations committee” be used instead of incumbency committee, and that those currently called lay members of the incumbency committee instead be termed “parish nominators”.

### **6.2 Communicant membership of parish nominators**

There is at present no requirement that parish nominators be communicant members of the church.<sup>25</sup> It is recommended that they ought to be, as is required of churchwardens and members of the parish council.

#### **Recommendation**

<b>21.</b>	<b>The new Bill should require that parish nominators be communicant members of the church.</b>
------------	---

### **6.3 Convening a parish nominations committee**

Section 20(1) of the Appointments Act provides that the Registrar shall summon the parish nominations committee<sup>26</sup> to meet with all convenient speed after the designated bishop<sup>27</sup> has so directed. It has been suggested that the designated bishop should summon the parish nominations committee, rather than the Registrar.

While in practice the process is led by the designated bishop, who chairs the parish nominations committee, it remains a Registry function to ensure and record that the various steps have been followed. It is the Registrar who has the names and details of the consultants and lay facilitators, and who is responsible for determining who is next in line by rotation (noting that under the present legislation both operate across territorial boundaries, even if current practice may be different).

There may also be a question here of perception: this is a formal process under legislation, rather than (in its legal and formal respects) something in the gift or discretion of the designated bishop.

---

<sup>25</sup> That is, of the Anglican Church of Australia

<sup>26</sup> The Appointments Act refers in all cases to the “incumbency committee”. For convenience, this paper in all cases uses the term “parish nominations committee” as this is consistent with the discussion and recommendations regarding the future.

<sup>27</sup> The Appointments Act refers in all cases to the “Regional bishop”. For convenience, this paper in all cases uses the term “designated bishop” as this is consistent with the discussion and recommendations regarding the future.

It should also be noted that if the summoning of a parish nominations committee is to be delayed, there is a process for that in section 16(2), which allows the process to be delayed pending a review. The review is at the initiative of the designated bishop, and requires the formal consent of the parish council. Accordingly, the direction of the designated bishop to the Registrar should be seen as automatic, not an opportunity for delay independent of section 16(2).

The expansion of the scope of s 16(2) should be considered. It is possible that a designated bishop and the parish council might consider that some delay would assist the parish, even if a review would not. There seems to be no reason not to suspend the convening of the parish nominations committee for a broader range of reasons than to allow a review (or in other words, to give "review" a broad interpretation to include reflection and discernment).

This paper also proposes a further basis for delay, which is where an intentional interim vicar is appointed (see recommendation 10). Where neither section 16 nor the processes referred to in recommendation 10 have been invoked, there is no reason for convening of the parish nominations committee to be delayed.

A second matter is the meaning of "with all convenient speed". For the reasons just mentioned, the sense of some flexibility in determining the speed can be interpreted as infinite discretion in whether the committee is convened at all. To address this, there should be a stipulated time within which the committee must be convened, allowing for situations where (for example) the various members of the parish nominations committee are on leave or otherwise unavailable. Two months should cover all such contingencies, even if after first being convened it is necessary to postpone further meetings of the committee.<sup>28</sup>

#### **Recommendation**

<b>22.</b>	<b>In order to avoid doubt, the new legislation should provide that the designated bishop must, with all convenient speed, and at any event within two months, after the relevant circumstances have occurred, direct the Registrar to summon the parish nominations committee and the Registrar must do so.</b>
<b>23.</b>	<b>The summoning of the parish nominations committee may be suspended for a period not exceeding 12 months in any case where the designated bishop, the archdeacon and the parish council consider it to be in the interests of the parish and the Diocese to do so.</b>

#### ***6.4 Convening a parish nominations committee before the end of an incumbency***

Section 16(1) provides that a parish nominations committee must be convened if a parish is vacant or "(b) the [designated] bishop has notice that the incumbency of a parish is about to become vacant or that the term of office of the incumbent is about to expire".

---

<sup>28</sup> Other arguments have been offered for delay in convening the parish nominations committee for the first time—for example, that the parish has not yet developed a parish profile. There is no legislative requirement to have a parish profile, and in any case the committee at its first meeting could explore what reasons there may be for not having a profile, and how these might be addressed. Processes and practices that might delay the convening of the parish nominations committee should either be in the legislation or not be allowed to prevent the initial meeting.



The question has been raised whether it should be the designated bishop or the Archbishop who has notice for the purpose of this sub-section. Certainly it is the Archbishop, not a designated bishop, who licenses a vicar, and therefore to whom any notice is given, and the advice regarding an impending expiration of an incumbent's term would in a formal sense be given by the Registrar to the Archbishop, whatever might happen in addition in practice.

#### **Recommendation**

<b>24.</b>	<b>The new Bill should require that a parish nominations committee be convened if (amongst other things) the Archbishop has notice that a parish is about to become vacant or the term of office of the vicar is about to expire.</b>
------------	---

### **6.5 Confidentiality**

The Appointments Act is silent on whether the members of the parish nominations committee are bound to maintain confidentiality regarding its work. The need for confidentiality is self-evident, and it is better that this be explicit rather than understood.<sup>29</sup> Those appointed as consultants and lay facilitators could sign an appropriate declaration each time they are elected or appointed to the relevant panel. In the case of parish nominators, it would be appropriate for them to sign a declaration once the parish nominations committee is summoned (or they are part of a process of reviewing or deciding whether to extend the vicar), as this is the time that connects the commitment to the work.

#### **Recommendation**

<b>25.</b>	<b>The new Bill should require members of the Diocesan panels of consultants and facilitators to sign a commitment to confidentiality each time they are elected or appointed to the panel, and parish nominators to sign a commitment to confidentiality each time they are summoned to begin performing one of their statutory functions.</b>
------------	---

### **6.6 Membership, voting and unanimity**

Section 20(3) of the Appointments Act provides that the parish nominations committee must seek unanimity on who is to be recommended to the Archbishop for appointment, but section 20(4) says that in the absence of unanimous agreement, all that is needed is for the designated bishop and a majority of the parish nominators to agree.

These two provisions do not sit well together, in that, in the absence of unanimity the archdeacon and clerical consultant are sidelined and the decision becomes that of the bishop and the parish nominators.

---

<sup>29</sup> In any recruitment process it is necessary to keep confidential the identity of applicants and people being considered, and their personal details, and this is now reinforced by the laws relating to privacy. The pressure can be greater in a parish setting where the parish nominators can be pressured to explain delays, or test the reaction of other parishioners to possible nominees. Even for the other members of a committee, it may sometimes be tempting to share with one committee what they have learnt about a possible nominee through being on another committee.

The situation in this Diocese is different from that in the other metropolitan Dioceses. While no two dioceses are exactly the same, in broad summary in all of them the parish nominations committee comprises the bishop, the archdeacon, one or two clerical members from a panel elected by the Synod, one or two lay members from a panel elected by Synod, and parish representatives. Each has one vote, with the committee voting as a whole.<sup>30</sup>

This comparison raises a number of questions and matters for consideration for the legislation of the Melbourne Diocese

## LAY DIOCESAN NOMINATORS

The current Appointments Act includes the role of lay facilitator, who has no vote and is an independent adviser for the parish nominators. There is no equivalent in other dioceses. The role of lay facilitator may have evolved into something different from that originally envisaged. Lay facilitators may now have experience in recruiting staff in other contexts, and may add to the quality of the committee's work. It may be seen as enhancing their role still further for them to bring to the committee's work their vote as well as their insight and experience. In addition, the approach of the church generally is to have both clergy and laity involved in roles, especially elected roles, that are part of the governance of the church. Most committees established by Synod legislation have both clerical and lay members.

## APPOINTMENT AND SELECTION OF DIOCESAN NOMINATORS

Other metropolitan dioceses have clerical and lay diocesan nominators for the whole diocese; that is, neither class of nominator operates only within a particular geographical area within the Diocese. This is true even though the other metropolitan dioceses (apart from Adelaide) cover an area at least as large as the Diocese of Melbourne.

In these other dioceses, clerical and lay diocesan nominators are elected by the Synod. In the Diocese of Melbourne, only the clerical nominators are elected by the Synod, the lay facilitators currently being appointed by the Archbishop in Council. There is no reason to have a different manner of appointment for each class of diocesan nominator: either both should be elected by the Synod, or both appointed by the Archbishop in Council.

When the parish nominations committee is formed for a particular parish, the particular diocesan nominators assigned to that committee are chosen in different ways in different dioceses—by the Archbishop from the panel, by rotation from the panel, or by the Synod itself (meaning that in some Dioceses this must be close to a full-time job).

---

<sup>30</sup> Dio Adelaide: (a) the Bishop; (b) the Archdeacon; (c) the churchwardens; and (d) one clerical and one lay Diocesan Nominator, each selected by the Bishop from panels elected by Synod; (e) three other nominators chosen by the vestry (The Parochial Administration Ordinance 1985 (Adel) s 53)  
Dio Brisbane: the Presentation Board for each parish comprises Diocesan nominators and parish nominators, each of whom has one vote. (Parishes Regulation Canon (Brisbane) s 18)  
Dio Perth: Archbishop or nominee; Archdeacon or nominee; 2 clergy from a panel of 10 elected by Synod; four parish nominators. (Clergy Appointments Canon 1996 (Perth) s 6)  
Dio Sydney: parish Nomination Board comprises (a) the Bishop or Archdeacon of the relevant region; (b) 2 members of clergy elected by Synod, (c) 2 lay persons elected by Synod, (d) 5 lay persons elected by the parish. (Nominations Ordinance 2006 (Syd) s 28).  
Dio Gippsland: parish Clergy Appointments Advisory Board comprises the bishop (as non-voting chair), the archdeacon, two members (one clerical, one lay) appointed to a panel by the Synod, and three parish nominators, each (other than the bishop) with one vote.

## VOTING

In other metropolitan dioceses there is no requirement for unanimity, and each member has one vote.

## OPTIONS FOR THE LEGISLATION

The structure of the parish nominations committee in this Diocese does not appear to have been the subject of widespread criticism, but it is distinctively different from that operating in all the other metropolitan dioceses, which is broadly the same. For the purposes of consultation and discussion, the recommendation is that two options be considered, one the current approach more clearly expressed, and the other distilled from that operating in all the other metropolitan dioceses.

### Recommendation

<b>26.</b>	<p><b>OPTION A</b></p> <p><b>The parish nominations committee should comprise the designated bishop, the relevant archdeacon, a clerical consultant (chosen by rotation from a panel elected by Synod), a lay facilitator (chosen by rotation from a panel appointed by the Archbishop in Council) and 3 parish nominators;<sup>31</sup> and the recommendation of parish nominations committee should be supported by the designated bishop and a majority of the parish nominators, but before agreeing on any recommendation each member of the parish nominations committee must be fully heard regarding what that recommendation should be.</b></p> <p><b>OPTION B</b></p> <p><b>The parish nominations committee should comprise the designated bishop, the relevant archdeacon, a clerical Diocesan nominator (chosen by rotation from a panel for the whole Diocese elected by Synod), a lay Diocesan nominator (chosen by rotation from a panel for the whole Diocese elected by Synod) and 3 parish nominators;<sup>32</sup> each of whom has one vote.</b></p>
------------	--

### **6.7 Reporting on "the terms of the agreement"**

Following an agreement by a parish nominations committee, the designated bishop is required by s 22 to report to the Archbishop "the terms of the agreement".

To avoid confusion about this term, it might better read "the decision of the parish nominations committee".

### Recommendation

<b>27.</b>	<p><b>The re-enacted section 22 of the Appointments Act should require that the designated bishop report to the Archbishop the decision of the parish nominations committee.</b></p>
------------	--

---

<sup>31</sup> plus any additional nominators for additional worship centres

<sup>32</sup> plus any additional nominators for additional worship centres

## **6.8 Speed**

Sections 23 and 27 of the Appointments Act are concerned with what to do when the normal process has not led to a recommendation. These sections require the Archbishop to direct the convening of further meetings of the parish nominations committee within 14 days. Experience suggests that there is often great difficulty in convening a meeting within 14 days. By contrast, s 20 requires the Registrar to summon the parish nominations committee to meet "with all convenient speed" after the designated bishop has so directed, although it is now recommended that this must be within two months. Given that the context of these sections is that there has already been a delay or the need to do further work, it is recommended that the period be one month, rather than 14 days.

Beyond that, it has been questioned whether the requirements of s 27 should be mandatory. This section requires a special meeting of the parish nominations committee to be convened, chaired by someone other than the designated bishop, if an appointment has not been made within 6 months of the parish nominations committee first meeting.

As is often the case with legislation, there is some concern that this is too rigid a requirement, in that the delays in the process may be quite reasonable and unexceptionable, and therefore it should be allowed to take its course. There are certainly situations in which this would be true; everything is proceeding as it should, but for various reasons it is taking a bit longer to reach a conclusion.

On the other hand, making this a matter of total discretion may remove any incentive to complete the process with due expedition, or may allow some participants in the process to prolong it without any mechanism to force it to reach a conclusion. These competing considerations might be reflected in various approaches. One might be to provide that the Archbishop may require the parish nominations committee to meet with a different chair after 8 months, and must require it to do so after 12 months.

If these longer periods are adopted, however, the time should run from when the parish nominations committee could first have been convened. Otherwise, there might be instances of it taking 3 months for the first meeting, and then a further 12 months of meetings, before the Archbishop can convene a special meeting.

### **Recommendation**

<b>28.</b>	<b>The new Clergy Bill should provide that if the parish nominations committee is to be reconvened in the circumstances currently described in section 23 or 27 of the Appointments Act, it should meet again within one month.</b>
<b>29.</b>	<b>The new Clergy Bill should provide that if a parish nominations committee has not made a recommendation, the Archbishop may appoint a new chair following the first 8 months from the date on which it could first have been convened, and must do so following 12 months from that date.</b>

## **6.9 The Archbishop's satisfaction regarding the appointment**

Section 24 of the Appointments Act provides that, when a priest accepts the offer of an appointment, the Archbishop, if satisfied that due provision has been made or arranged in respect of superannuation (unless the need for superannuation has been dispensed with by Act) shall institute the priest to the parish.

The legislation should require the Archbishop to be satisfied as to all applicable statutory requirements (such as those relating to professional standards), and those additional requirements should be explicit in the legislation, at a general level that reflects the evolving nature of such requirements over time.

### **Recommendation**

<b>30.</b>	<b>The new Bill should provide that, before instituting or appointing a person as vicar of a parish, the Archbishop must be satisfied that the person has satisfied all applicable legal requirements.</b>
------------	--

### **6.10 Oaths and declarations**

Section 26 of the Appointments Act provides that a clerk presented to a parish before being instituted must take the oaths and make the declarations and subscription required by law and by practice of the Anglican Church of Australia in Victoria to be taken, made or subscribed to by a clerk instituted to a parish.

It appears that in some other Dioceses a priest is required to take the oaths and make the declarations only once, on the occasion of their first being licensed in that Diocese. There may be an element of inconvenience associated with repeating this process on each new appointment, and maybe some priests feel that being required to take oaths and make declarations again in some way questions their commitment to what they have already done.

At the same time, the laws and practices of the Anglican Church of Australia in Victoria change over time, and there may be benefit for the church and the people of God to hear a priest repeat their commitment to them at the time of taking up a fresh appointment.

The Church of England requires that every bishop, priest and deacon reaffirm the Oath of Canonical Obedience and Declaration of Assent on every occasion of being translated, instituted, installed, licensed or admitted to office.<sup>33</sup>

It is not recommended that any change be made to the current requirement.

### **6.11 Period as vicar following initial institution**

Section 35(1) provides that the term of office of a priest instituted to a parish shall be 10 years. "Institution" covers their period as vicar, whether with the status of incumbent or the status of priest in charge. (This is clear in the following section, which begins "A priest who is instituted to a parish (except as a priest in charge)...".)

Conversely, Part 3 (ss 32-34) is concerned with priests instituted to their first parish in the Diocese to which they are licensed, and deals with their status, not the length of their term. Thus section 32 provides that they are licensed "not as incumbent, but as priest in charge", with s 34(1) then providing that at the end of the term as priest in charge they are assessed for incumbency. The status of incumbent obviously confers additional rights (*cf* s 36), but cannot displace the general statement in s 35(1)(a).

---

<sup>33</sup> see Canon C14(5) and Canon C15.

Therefore the process of review of a priest in charge after three years is to determine whether they are to continue for the balance of the period for which they were instituted, but now licensed as incumbent rather than as a priest in charge. This reading is consistent with s 34(4): "If the priest is assessed and not approved for incumbency the Archbishop may revoke the license of the priest."

It would appear that, despite the legislation, there has been a practice in the case of priests instituted in their first parish in the Diocese to read "10" as "13", so that they are instituted for 13 years with their appointment reviewed after the first three years, and then a licence being given for another 10 years.

This is a matter of policy. There may be a case for priests in their first parish in the Diocese being instituted for 13 years rather than the normal 10, perhaps as an incentive to move from other Dioceses or countries, or because it takes longer for them to find their feet and establish the direction of their incumbency. On the other hand, there may be a case to maintain the current legislative approach of having a standard 10 years for all priests from the time of their institution to a parish, subject (of course) to further 5-year extensions. It is suggested that the better and clearer policy is that in the current legislation, that every vicar is instituted for the same period (10 years, unless they are 65 or older or licensed to as a part-paid vicar).

### **Recommendation**

<b>31.</b>	<b>The new Bill should continue to provide that all priests are instituted to a parish for a period of ten years (or five if a new approach to part-time incumbents is taken up), whether or not they are reviewed for transition to incumbency at the end of the first three years.</b>
------------	--

### **6.12 Review of priest in charge**

Section 34 of the Appointments Act provides:

- (1) The Archbishop shall cause to be made an assessment of the suitability for incumbency of a person appointed as priest in charge.
- (2) The assessment shall be made as soon as practicable after the end of the first 3 years of the appointment of the priest as priest in charge.
- (3) The assessment shall be made as determined by the Archbishop and may, if the Archbishop so determines, be assisted by the lay members of the incumbency committee.
- (4) If the priest is assessed and not approved for incumbency, the Archbishop may revoke the license of the priest.

There are several elements of this section that need to be reconsidered or more carefully drafted.

Sub-section (2) provides that the assessment is to be made *after* the end of the first three years of the priest's appointment. If followed, this sub-section inevitably requires the Archbishop to extend the appointment beyond three years, in order to cover the period of the assessment. Further, it is not clear how long that extension should be, because it cannot be known how long the assessment will take. Leaving the commencement of the process until after the initial period of three years creates uncertainty for both the vicar and the parish. It would provide greater certainty if the legislation required that the assessment be

made *before* the end of the first 3 years, and (given the logistical challenges if the vicar's term is not extended) if it provided that the assessment is to take place between 6 and 4 months before the 3<sup>rd</sup> anniversary of the priest's institution.

Sub-section (3) provides that the Archbishop *may* determine that the assessment be assisted by the lay members of the parish's parish nominations committee. It is difficult to see why the parish nominators should not always be part of the assessment. That does not mean that their views and advice will be determinative, but it is hard to imagine circumstances in which the parish nominators should have no role in the assessment of the suitability of their vicar to continue in their parish. The sub-section might better conclude, "and must be assisted by the parish nominators in a manner determined by the Archbishop."

The sub-section is silent on the option of having the vicar continue for a further period as priest in charge. It may not be necessary to include such an option. The legislation assumes that 3 years is a long enough period to assess the priest's suitability to continue as incumbent of the parish in question. It has been suggested, however, that in some situations that may not be the case, such as when the priest has not been able to perform the role properly due to some major health issue, or is subject to a professional standard complaint or a charge before the Diocesan Tribunal. On the other hand, it is in the interests of the priest, the parish and the church to have certainty regarding who is the vicar and for what expected period of time (so far as this is possible). It is accordingly not recommended that there be an option for the postponement of a decision regarding the vicar transitioning to become the incumbent. To make this clear, there should be a provision to the effect that a priest in charge who is not assessed as suitable to continue as incumbent after 3 years ceases to be the vicar on the expiration of the term of their licence.

#### **Recommendation**

<b>32.</b>	<b>The review of a priest in their first parish in the Diocese for transition to incumbency should take place between 6 and 4 months before the 3<sup>rd</sup> anniversary of their appointment and should always be assisted by the parish nominators in a manner determined by the Archbishop.</b>
<b>33.</b>	<b>The new Bill should provide that a priest in charge who is not assessed as suitable to continue as incumbent after 3 years ceases to be the vicar on the expiration of the term of their licence</b>

#### **6.13 Extension of incumbency**

As a matter of policy, a priest instituted to a parish can have their tenure extended by 5 years after serving an initial 10 years in the parish, and then 5 years after each last extension.<sup>34</sup> This policy is not being reviewed.

The process included in the Act for deciding whether to extend an appointment was singularly unfortunate in its design. It is based on the idea that at the end of the 10 years the incumbency is vacated. The parish nominations committee is consequently convened, and may, rather than proceeding to appoint some other priest, choose to re-appoint the existing incumbent.<sup>35</sup> This approach is unsatisfactory for several reasons. In particular:

---

<sup>34</sup> Appointments Act s 35(1)

<sup>35</sup> Appointments Act s 20(5): "If the incumbency is not vacant, the incumbent shall be deemed to be a priest who might be appointed..."

- it does not remove the duty of the parish nominations committee to consider all the priests who might be appointed to the incumbency.<sup>36</sup>
- it means that if the present incumbent is not extended, the same parish nominations committee must continue with its work to appoint a new priest; and
- it means that there is no process of discernment as to whether to grant an extension before the process of appointment of a new priest commences (because the process of consultation in s 16(2) only applies “before the [parish nominations] committee of the parish is convened”).

The process of determining whether an existing incumbency should be extended should be designed to operate in its own terms, and not as the first step in appointing to a vacancy.

Making consideration of the extension of an incumbency independent of any parish nomination process would mean (amongst other things) that the composition of the group considering the extension would always be the same. Under the present legislation the question arises whether there is a role for the parish nominations committee at all when the next appointment would be an Archbishop’s appointment. That need no longer be an issue.

The simplest approach would be to replicate the process for allowing a priest in their first parish to continue as the incumbent. At a certain time before the expiration of 10 years of the date of institution, the designated bishop would meet with the parish nominators and the incumbency would be extended if so agreed by the designated bishop and a majority of the parish nominators. This is, in fact, exactly the numbers in agreement required by the current legislation, but without the complication of making this process the commencement of a process to make an appointment to a vacant parish.

In order for the process of review to be completed and the outcome known by the end of the three-month period, it is proposed that it should begin at the latest 4 months before the end of the period of appointment.

An alternative would be to have an augmented group, including (for example) the Archdeacon, or a clerical or lay consultant. Regarding the Archdeacon, see section 6.16 below. Regarding others, the proper policy may depend on the degree of involvement. After 10, 15 or 20 years, the parish nominators and the bishop are likely to have a well-formed, and well-informed, view about whether the incumbency should be further extended, and it would be unfortunate if their view was overborne by the views of others who may have very little knowledge of the parish or the incumbent.

The question that arises (and the same question could equally be raised in the case of the review of a priest in charge) is whether the process should include the option of involving a wider group of parishioners, such as all the churchwardens, or the parish council, or the option of a consultation.

Expanding the pool of those contributing to this decision-making in this way would not be consistent with the tradition of this diocese. The general view is that the parish chooses the lay members of its parish nominations committee and they then perform their statutory functions. The only context in which the parish might become involved in this process is

---

<sup>36</sup> Appointments Act s 20(2)



under s 16(2) of the Appointments Act, where a consultation may occur *before* the parish nominations committee process begins. This paper does not suggest any change, but the topic is raised for consideration. If the parish nominators do not talk to any parishioners, then they may not be representative of the parish; but if they do, those they talk to may not represent the full spectrum of parishioners. It is possible that a formal process is fairer and more representative than an informal one.

### Recommendation

<b>34.</b>	<b>The current process for deciding whether to extend an existing incumbency should be replaced with a process where the designated bishop and the parish nominators meet four months before the date on which the incumbency will otherwise end and the incumbency is extended if so agreed by the designated bishop and a majority of the parish nominators (with the involvement of the Archdeacon—see recommendation 37).</b>
------------	---

### ***6.14 Extension when there is a professional standards complaint***

A particular matter requiring consideration is what should happen when at the time when the need to consider an extension has arrived the incumbent or priest in charge is the subject of a professional standards complaint that has not been concluded, or of a charge to be heard by the Diocesan Tribunal.<sup>37</sup>

In considering the right policy it must be remembered that no two situations are the same, and, in a particular instance, there may be considerable complexity. For the purposes of this paper, the important thing is that designated bishops and parish nominators may be reluctant to extend a vicar's tenure while a complaint remains to be considered and resolved. The complaint or charge may be unrelated to the parish or to anything done while the priest has been vicar of the parish.

For some, the right approach would be to suspend the consideration of an extension until the complaint has been dealt with. This could mean that the incumbency is, in effect, extended for a year or more without the agreement of the designated bishop or parish nominators.

There are some obvious problems with an approach that means that the bringing of a professional standards complaint or a charge against a vicar extends his or her tenure indefinitely pending its final resolution. If the complaint relates to behaviour that might warrant not extending the incumbency, making a complaint might have the perverse outcome of prolonging the incumbency beyond the date when the incumbency committee might otherwise have brought it to an end; and in an extreme case, the person bringing a complaint may be pressured to withdraw it so that the parish nominations committee can meet and decide against an extension.

In other situations, the parish nominators may consider that a vicar's tenure should not be extended for reasons quite unrelated to a charge or professional standards complaint, and

---

<sup>37</sup> There may also be an investigation of a possible breakdown in pastoral relations, but that is an inherent part of the consideration of the vicar's suitability to remain as vicar, and therefore need not be seen as independent of the processes in place for that consideration.

again it seems perverse for the vicar's tenure to be automatically extended while the complaint is ongoing.

This is a topic that might be expected to generate discussion and a range of possible solutions.

As the discussion proceeds, one question that should be considered is the Diocesan policy relating to the extension of incumbencies. On the face of it, the policy in the legislation is that an incumbency lasts for 10 years, and that an incumbent has no reason to expect it to last longer than that, although it may if the parish (through the parish nominations committee) wishes it to do so. The alternative policy is that a vicar's tenure lasts indefinitely, subject only to a process of confirmation after 10 years (3 years in the case of a priest in charge) and then subsequently after further periods of 5 years, which in the normal course of things will be given.

The latter view of the policy should suggest that the process of considering an extension should be suspended indefinitely while complaints and charges against the incumbent remain outstanding, while the former would suggest that the incumbency should end at the time provided for in the legislation unless, notwithstanding the existence of an outstanding complaint or charge, the parish wishes it to be extended.

To the extent that employment law provides helpful analogies, it is noted that an employee on a fixed term contract is not entitled to remain employed past the end of that contract pending the determination of disciplinary actions commenced by their employer, nor would the bringing of a charge of a professional misconduct against a member of a profession employed on a fixed term contract create an entitlement for them to remain employed past the end of their contract until the conclusion of proceedings against them. On the contrary, in both cases their employment would conclude at the end of the fixed term (unless extended by mutual consent of the employer and employee, or unless the employment contract explicitly provided that the fixed term would be extended in the event that the employee was the subject of disciplinary action or misconduct charges) regardless of the disciplinary action or misconduct proceedings then in train.

A related question is what should happen when the vicar has already been suspended, and the time for the review or extension arises. There is no particular reason to treat this differently, however. If the underlying assumption that a vicar is appointed indefinitely unless removed through some extension or review process, and that she or he is entitled to the presumption of innocence when accused of an offence or breach of professional standards, then the policy position will be that the extension or review will be postponed until the accusation is dealt with. On the other hand, if the assumption is that there is a fixed-term appointment with an option on the part of the parish through its parish nominators to renew, then the policy will be that the process of extension or review would continue, even though, were the accusation upheld, the vicar might be unable to continue as a result of that process.

One approach that might be considered is to allow the Archbishop, in consultation with the designated bishop and parish nominators, to decide whether to postpone a review or consideration of an extension or not. This approach would enable each situation to be considered in its own terms: for example, if the parish nominators insisted that the term would not be extended in any circumstances, the process could proceed, while if they advised

that the parish was comfortable with the vicar remaining in place until the outcome of the proceedings, then that could also happen.

#### **Recommendation**

<b>35.</b>	<b>In a situation where at the time for the review of a priest in charge or the extension of the term of an incumbent that priest is the subject of a professional standards complaint or a charge before the Diocesan Tribunal, the Archbishop, following consultation with the designated bishop and parish nominators, should determine whether the review or consideration of an extension should proceed or be deferred.</b>
------------	---

#### ***6.15 Determining the parishes subject to an Archbishop's appointment***

In 1975 the Appointments Act was amended by the Appointments Amendment Act to vest the choice of every third incumbent in the Archbishop. In order to stagger the application of this approach across the parishes in the diocese, that amending Act also provided for parishes then in existence to be divided into three categories, with the Archbishop's right being exercised respectively on the next, second or third vacancy. That categorization is still reflected in the Schedules to the Appointments Act.

While having the parishes allocated in this way served its intended purpose, it did not provide for the creating of parishes, or their amalgamation or separation. While the principle of vesting every third choice in the Archbishop is not being re-considered, the legislation should establish a more durable principle.

For current parishes, the position in s 29(2) of the Appointments Act is sufficient: on every third successive occasion on which the parish is vacant (not counting an extension) the choice vests in the Archbishop.

The first appointment to a newly established parish should also vest in the Archbishop: this is part of the process of establishing the parish.

As the amalgamation and separation of parishes requires a decision of the Archbishop in Council, the appropriate approach would be to stipulate that as part of that decision the Archbishop in Council must determine whether the next succeeding vacancy is the first, second or third appointment. (The separation of two parishes being referred to is not the same as the creation of a new parish. From time to time adjoining parishes decide to become one parish, and then later decide that it would be better for them to separate again. These situations are not common and always have their particular characteristics.)

#### **Recommendation**

<b>36.</b>	<b>The new Bill should continue to provide that on every third successive occasion on which the incumbency is vacant (not counting an extension) the choice vests in the Archbishop, but should also provide that the first appointment to a newly established parish should also vest in the Archbishop and that on the amalgamation or separation of parishes the Archbishop in Council determines whether the next succeeding vacancy or vacancies is the first, second or third appointment.</b>
------------	--

### **6.16 Inclusion of Archdeacon in decision-making**

Even where the primary responsibility for decisions rests with the designated bishop and the parish nominators, there should be a requirement that the relevant archdeacon be present as well and be able to contribute fully to the discussion. This reflects the importance of archdeacons in supporting the designated bishop, clergy and parishes, and introduces an extra source of information and accountability.

#### **Recommendation**

<b>37.</b>	<b>Wherever the primary responsibility for decisions rests with the designated bishop and the parish nominators, it should be a requirement that the relevant archdeacon be present as well and contribute fully to the discussion.</b>
------------	---

## **7. Breakdown in pastoral relationships**

### **7.1 Finding best practice**

According to Norman Doe, writing in 1998,

Whilst most churches [in the Anglican Communion] assign to the bishop a general jurisdiction over the discipline of both clergy and laity in the diocese, very few churches possess formal structures for the particular problem of pastoral conflict. Notable exceptions to this general rule are ECUSA and the Church of England.<sup>38</sup>

To this list might be added the Dioceses of Sydney and Melbourne in Australia.

It is important at the outset to note that the following discussion concerns what should be in legislation. Over several years the Diocese has developed, and continues to develop, well-considered processes of mediation and similar interventions to assist in improving the relationship between clergy and their parishioners. Those processes should be affirmed and should continue. The present discussion, however, is concerned with what should happen when these processes have proven unsuccessful, and it is necessary to have recourse to something more formal based on explicit legislative authority.

This is important, because there needs to be an established due process that has been taken to and explicitly agreed by the Synod, and because the rights and options of all participants need to be known as the process unfolds.

Part 5 of the Appointments Act establishes a process using a Board of Reference. Under s 41 of the Appointments Act, the Archbishop may make a reference concerning a parish to a Board of Reference if the Archbishop "is satisfied that there is a breakdown in the pastoral relationships in the parish and that, in all the circumstances of the case, it is appropriate to make the reference" and if there is a written request to make a reference from the incumbent or various others.

It is the responsibility of the Board of Reference to establish whether there is a breakdown in pastoral relationships and, if so, whether it is irretrievable. Following the Board's enquiry and on its recommendation, it is possible for the Archbishop to revoke the incumbent's licence.

The Melbourne legislation is not specific regarding what is meant by a breakdown in the pastoral relationship and is focussed on the contribution of the incumbent to that breakdown.

The Church of England describes the breakdown as,

a situation where the relationship between an incumbent and the parishioners...is such as to impede the promotion in the parish of the whole mission of the Church of England, pastoral, evangelistic, social and ecumenical.

Section 1A of the Incumbents (Vacation of Benefices) Measure 1977 of the Church of England provides:

---

<sup>38</sup> Norman Doe, *Canon Law in the Anglican Communion: A Worldwide Perspective*, Oxford: OUP, 1998, p 78. More recently the expression "The Episcopal Church" or "TEC" has been favoured over "ECUSA".

- (1) A request for an enquiry under this Part of this Measure into the pastoral situation in a parish on the ground that there has been a serious breakdown of the pastoral relationship between the incumbent and the parishioners to which the conduct of the incumbent or of the parishioners or of both has contributed over a substantial period may subject to subsection (1A) below be made by—
- (a) the incumbent of the benefice to which the parish belongs; or
  - (b) the archdeacon in whose archdeaconry the parish is; or
  - (c) a majority of not less than two-thirds of the lay members of the parochial church council of the parish present and voting at a duly convened meeting of that council on a resolution that the request be made; or
  - (d) where the incumbent mentioned in paragraph (a) above is the archdeacon mentioned in paragraph (b) above, a majority of the members of the bishop's council and standing committee of the diocesan synod of the diocese in which the parish is.
- (1A) An enquiry under this Part of this Measure shall only be undertaken after the persons concerned have had an opportunity to resolve the pastoral situation in the parish in question; and, accordingly, a request for such an enquiry shall not be made unless notice of intention to make the request has been given by the person or persons concerned to the bishop of the diocese in which the parish in question is at least six months, and not more than twelve months, before the request is made.

An enquiry is then instituted<sup>39</sup> and conducted by the relevant provincial tribunal<sup>40</sup>. The provincial tribunal must report to the bishop whether in its opinion there has been a serious breakdown of the pastoral relationship between the incumbent concerned and the parishioners, and whether in its opinion the breakdown is one to which the conduct of the incumbent or of the parishioners or of both has contributed over a substantial period.<sup>41</sup> Where it is of that opinion, it must include in its report its recommendations as to the action to be taken by the bishop.<sup>42</sup>

If, but only if, there is a finding of a serious breakdown of the pastoral relationship between the incumbent and parishioners, and it is recommended by the tribunal, the bishop may declare the benefice vacant.<sup>43</sup> In addition, the following provisions are important:

- (5) Where the...tribunal reports to the bishop that in its opinion the serious breakdown of the pastoral relationship between the incumbent concerned and the parishioners is one to which the conduct of the incumbent has contributed over a substantial period, the bishop may rebuke the incumbent and may, if he thinks fit, disqualify him from executing or performing without the consent of the bishop any such right or duty of or incidental to his office, and during such period, as the bishop may specify.
- (6) Where the...tribunal reports to the bishop that in its opinion such a breakdown as is mentioned in subsection (5) above is one to which the conduct of the parishioners has contributed over a substantial period, the bishop may rebuke such of them as he thinks fit and may, if he thinks fit, disqualify such of them as he thinks fit from being a church warden or member or officer of the parochial church council of the parish in

---

<sup>39</sup> Incumbents (Vacation of Benefices) Measure 1977, s 3

<sup>40</sup> *ibid* s 5

<sup>41</sup> *ibid* s 9(1)

<sup>42</sup> *ibid* s 9(4)

<sup>43</sup> *ibid* s 10(2)

question and of such other parishes in his diocese as he may specify during such period not exceeding five years as he may specify.

...

- (7) Without prejudice to the preceding provisions of this section, the bishop may give such pastoral advice and guidance to the incumbent concerned and the parishioners as he thinks appropriate having regard to the findings and recommendations of the...tribunal.

The particularly important features of this process are these:

- There has to have been a serious breakdown in pastoral relationships over a substantial period;
- There is a clear and formal process;
- The process can result in the benefice being vacated;
- There can be a finding of who contributed to the breakdown, but it can be that either or both the incumbent and the parishioners contributed, and both can be rebuked and suffer consequences through being disqualified from holding certain offices.

It is also important to note that in the course of its enquiry, the tribunal must explore carefully whether the incumbent is affected by age, ill health or some other physical or mental incapacity. This allows the situation to be resolved without blame or ignominy where this is the case.

The legislation in the Diocese of Sydney is the Parish Disputes Ordinance 1999. It covers all disputes, defined as "A disagreement between a minister and the parish council and/or one or more parishioners". It establishes a tiered approach: the parish, the designated bishop, a Reconciliation Panel, then an Advisory Panel. "The intent of these procedures is that at all levels - parish, designated bishop, Reconciliation Panel and Advisory Panel - the principles of non-adversarial dispute resolution, mediation and reconciliation will be prayerfully, flexibly and persistently applied to the resolution of the dispute with a view to restoring relationships rather than relying on, determining or enforcing rights."<sup>44</sup>

It is notable that the Advisory Panel may recommend any or all of the following outcomes.

- (a) A set of actions either with a view to final resolution of the dispute, or as interim measures whose effect will be assessed after a period specified by the Advisory Panel and after which the Advisory Panel may recommend further actions.
- (b) To the minister that he take certain actions.
- (c) To the parish council, certain members of the parish council, or certain members of the congregation that they take specific actions.
- (d) To the Archbishop that the minister should be provided with certain training, leave or respite, and at whose cost.
- (e) To the Archbishop that he suggest -
  - (i) that the minister seek another position, and/or
  - (ii) that any office bearer of the parish tender their resignation.
- (f) To the Archbishop that he direct the minister and churchwardens to convene a vestry meeting to consider any recommendations of the Advisory Panel, and that the regional bishop or other person delegated by the Archbishop chair the meeting.

---

<sup>44</sup> Parish Disputes Ordinance 1999 (Sydney) s 3A.

- (g) Any other corrections, actions, rebuke, decisions or directions deemed appropriate.

These options clearly recognize that the resolution of a dispute may require certain members of the congregation or particular office bearers in the parish to take actions or resign, shifting the focus from the incumbent to all those who may have contributed in some way to the dispute.

On the other hand, in using the language of "dispute" the Sydney legislation implies the existence of some sort of conflict, whereas the reality may be that the particular configuration of incumbent and parish is just a bad fit.<sup>45</sup>

It should be noted that an alternative approach is through the professional standards regime. If the various parties to a dispute accuse each other of bullying, then the professional standards processes will be engaged. This is not a satisfactory substitute for a process designed to deal with a breakdown in pastoral relationships. It is necessarily focussed on establishing fault and whom to blame, and on sanctioning those responsible. It encourages each of the accusers to heighten the responsibility of the accused, rather than to acknowledge the complex ways in which relationships can become unsustainable.

Taking all these considerations into account, there are choices to be made. The areas of choice include the following:

- should the language used to describe the situation relate to a breakdown in the relationship, or to a dispute?
- should the matter be handled as one of mediation and (possibly directive) advice, or should it be one that can result in the alteration or removal of rights (eg, of an incumbency)?
- how much should a quasi-judicial process be followed, for example, with the taking of evidence and legal representation?
- should it be necessary to find that someone has in some way failed in the discharge of their responsibilities in order to find that the relationship between an incumbent and the parish has broken down irretrievably?
- what should be the relationship between processes in these circumstances and those under the professional standards regime, for example, by suspending one process during the progress of the other?

For most of these matters a helpful starting point may be the Incumbents (Vacation of Benefices) Measure 1977 (CofE) already discussed above.

### Recommendation

<b>38.</b>	<b>The Diocese of Melbourne should adopt an approach in relation to the serious breakdown of pastoral relations modelled on the Incumbents (Vacation of Benefices) Measure 1977 of the Church of England.</b>
------------	---

---

<sup>45</sup> While the topic is not further pursued in this paper, it should be noted that it would now be considered rare outside the church for a person appointed for the first time to a position of personal leadership and significant autonomy to be appointed for 10 years without a probationary period. Such appointments are normally subject to confirmation after between 3 and 6 months.



## **7.2 Reconciliation with other processes and proceedings**

Once a policy approach has been agreed, consideration should be given to how that approach is to be reconciled with the legislation relating to professional standards, and in particular that relating to bullying.<sup>46</sup> As noted above, the professional standards regime is necessarily focussed on identifying fault and deciding what should be done where fault is found, and that focus is compounded when from within the same parish various members of the clergy and lay office-holders accuse each other of such conduct. It is imaginable that what might cry out for consideration as a possible breakdown in pastoral relations is instead litigated as a series of allegations against the various individuals involved.

A better approach might be for the Professional Standards Commission to suspend consideration of all accusations of bullying from a parish and commence an enquiry into whether there has been a serious breakdown in pastoral relations. Those allegations would then only be further pursued if recommended at the end of that enquiry. This would cover two different possibilities:

- if the enquiry found that the whole situation should be considered as a serious breakdown in pastoral relations, it could recommend or determine that the accusations of bullying be withdrawn and not pursued further;
- if the enquiry found that there were allegations of bullying that should be addressed independently of any consideration of a breakdown in pastoral relations (whether or not it decided that there was a serious breakdown in pastoral relations), it could recommend that the professional standards process be resumed.

It should be noted that this option would include the ability to recommend there be no further independent consideration through professional standards processes where a thorough enquiry determined that there was no serious breakdown in pastoral relations and that any allegations of bullying were part of the factual matrix.

### **Recommendation**

<b>39.</b>	<b>All accusations of bullying (including spiritual and emotional abuse) made to the Professional Standards Commission from within a parish against the current vicar should be suspended if an enquiry into whether there has been a serious breakdown in pastoral relations is commenced. Those allegations would only be further pursued if so recommended at the end of that enquiry.</b>
------------	---

---

<sup>46</sup> Similar issues arise in the case of accusations of spiritual abuse, emotional abuse and so on.

## **8. Clergy offences and discipline**

### **8.1 Offences**

The Offences Canon 1962 of the National Church applies in the Diocese of Melbourne. That Canon creates certain offences for the purposes of the discipline of clergy, and these apply across the whole of the National Church. It is possible for a diocese to create additional offences that would apply to clergy in that diocese.

As part of the redrafting it should be made clearer that the jurisdiction of the Diocesan Tribunal extends to all the offences in that Canon as in force in the Diocese from time to time (that is, not only the offences then existing in 1962).

The Diocese of Adelaide has created these offences<sup>47</sup>:

- conduct unbecoming the office and work of a priest;
- racial abuse or harassment; and
- sexual abuse or harassment.

No other Metropolitan diocese has created additional offences.

### **8.2 Diocesan Tribunal**

Diocesan Tribunals are required by Chapter IX of the Constitution. Individual dioceses are able to make their own rules about some aspects of their Tribunals, and other matters must follow what is provided for in the Constitution. Dioceses in the Australian church have no choice as to whether they have a Diocesan Tribunal.

Each Australian Diocese has enacted its own legislation in relation to its Diocesan Tribunal. The Diocese of Melbourne enacted its Diocesan Tribunal Act in 1963. Schedule 1 Part A contains a table listing the various topics covered in the legislation of the five Metropolitan dioceses. It is readily apparent that of the 70 topics identified in the table only 3 are covered in the legislation of all these five dioceses.

The Diocesan Tribunal Act reflects its age in content, language and approach. For example, only the Melbourne legislation requires a person promoting a charge to pay a fee to the Diocesan Registry.<sup>48</sup> Every Diocese has provisions that are unique to it: for example, the Diocese of Brisbane establishes a Register of Ecclesiastical Offences; the Diocese of Melbourne allows the Board of Enquiry to amend a charge; the Diocese of Perth provides for a process to receive evidence from a witness who is unable to attend the Tribunal hearing; the Diocese of Adelaide allows the Tribunal to dismiss a charge that it considers trivial.

While some of these topics may seem to be either unnecessary or unnecessarily fussy, others point to topics that should be covered. The topics that should be considered for inclusion in the Clergy Bill are listed in Appendix 3 Part B. There is a policy question on which topics to include, but once selected the content should not be controversial.

There are some topics that require particular attention from a policy perspective.

---

<sup>47</sup> Clergy Discipline Ordinance 1983 (Adel) s 6A

<sup>48</sup> A fee of £10 is required (s 15)

### **8.3 Issues regarding Diocesan Tribunal legislation**

#### RESPONSIBILITIES OF BOARD OF ENQUIRY

The National Church Constitution requires that each diocese have a Board of Enquiry<sup>49</sup> to conduct a preliminary examination of any charge of a breach of faith, ritual or doctrine. Some dioceses limit the work of the Board to those charges, while others require the Board to conduct a preliminary examination of *all* charges, other than those brought by the Archbishop himself or herself. Having this Board consider all charges (other than those brought by the Archbishop) means that the full process of the tribunal, with its attendant costs in terms of time, finance, reputation, inconvenience and uncertainty, is deployed only where it is justified, and is to be preferred.

#### WHETHER THE SYNOD SHOULD ELECT ALL MEMBERS OF THE TRIBUNAL

There are essentially two approaches used in the legislation of the Metropolitan dioceses:

- having the Synod elect a panel from which are chosen the particular individuals who are to constitute the tribunal in a particular matter, or
- having the Synod elect all the members of the tribunal (with a reserve list to fill vacancies that may arise).

The latter is the approach in the current Melbourne legislation.

The Melbourne approach has the advantage of certainty, and not requiring a further suite of procedures to constitute a tribunal to hear a matter. The other approach assumes a smaller tribunal than in Melbourne (which has four clergy, two laity who are legal practitioners, and a president) with the members being drawn from those available at a particular time.

A tribunal of seven members is unusually large. If it is a requirement that the president of the tribunal is someone who has held or is qualified to hold judicial office it is questionable whether the lay members must be legal practitioners. A better size might be two clergy and two laity elected by the Synod, plus the president.

While there are merits in both approaches, there seems to be no strong reason to move away from the current approach of an elected tribunal with a reserve list.

#### ROLE OF THE ARCHBISHOP

There are certain functions that the Archbishop must perform, such as appointing the president of the tribunal, or formally approving the charge.

There are other functions that are discretionary in nature, such as whether a charge should proceed, and what sentence to impose. The current legislation requires the Archbishop to impose the sentence recommended by the tribunal, except that he or she may mitigate or suspend the sentence recommended, or both, and it is recommended that this approach continue. If the Board of Enquiry is able to determine in all cases whether a charge should proceed, it seems unnecessary for that same discretion also to be accorded to the Archbishop.

---

<sup>49</sup> Constitution, s 54(3)

## CHARGES ARISING FROM SECULAR PROCEEDINGS

Some Dioceses provide for a streamlined process where a member of the clergy has already been convicted in a secular court for an offence carrying a penalty of more than one year's imprisonment, and for the adoption of the findings of courts and Royal Commissions. These provisions are helpful in streamlining the church's response in such cases, and should be included. They do not pre-determine the eventual outcome (including the sentence), but they do mean that the tribunal does not have to conduct a fresh trial to establish the same facts.

### Recommendation

<b>40.</b>	<b>The new Bill should contain a full suite of provisions in relation to the Diocesan Tribunal and its associated processes and in particular:</b> <ul style="list-style-type: none"><li>• <b>Should require the Board of Enquiry to determine whether every charge should proceed, other than a charge brought by the Archbishop;</b></li><li>• <b>Should have a President who is appointed by the Archbishop;</b></li><li>• <b>Should have four other members elected by the Synod, two clerical and two lay (but without a requirement that any be legal practitioners);</b></li><li>• <b>Provide for a streamlined process where a charge arises from a conviction or adverse findings by a court or Royal Commission.</b></li></ul>
------------	--

### 8.4 Penalties

Section 27 of the Diocesan Tribunal Act provides,

If in any case on the hearing of a charge a majority of the Tribunal shall find the Respondent guilty it shall so report to the Archbishop 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 that is to say, monition, suspension from office, expulsion from office, deprivation of rights and emoluments appertaining to office, deposition from Holy Orders.

These sanctions are no longer consistent either with s 61 of the national Constitution, or with the Holy Orders (Removal from Exercise of Ministry) Canon 2017. The new Bill should be drafted in such a way that the available penalties are always consistent with those in the legislation of the national church.

## 9. Other matters

### 9.1 *New areas parishes*

The legislation makes special provision for new areas parishes, that is, parishes still being established and yet to have full independence and independent viability.

The Diocese has no new areas parishes and has not had any in living memory. Church planting and growth is now undertaken in other ways, and there is no need to continue provision for this particular option.

#### **Recommendation**

<b>41.</b>	<b>The new Bill should not reenact the provisions of the Appointments Act relating to new areas parishes.</b>
------------	---

### 9.2 *Recovery of property on vacancy*

Section 48 of the Appointments Act provides that, when the incumbency of a parish becomes vacant, the Archbishop may, with the consent of the Council of the Diocese, take or institute all necessary legal steps to recover any property belonging to the church in the custody or possession of the person who was the incumbent of the parish immediately before the incumbency became vacant.

It is proposed that this section be removed. There are several reasons for this. First, the right conferred may well exist at common law; secondly, the right may better reside in MATC or MADC; thirdly, to some extent the same subject matter is covered by s 38 of the Parish Governance Act (which provides the rights of the vicar to the means of gaining access to buildings subsist only for as long as s/he is the vicar), and s 53, which provides that all the registers and records are the property of the parish and are to be returned to the churchwardens at the end of the incumbency. In addition to these considerations, it is also not clear what is meant by the property of "the church". If the property in question was a mobile phone or a laptop provided by the parish, it is not clear why the Archbishop, rather than the churchwardens, would be taking the legal steps to recover it.

#### **Recommendation**

<b>42.</b>	<b>The new Bill should not reenact the provision of the Appointments Act relating to the recovery of property from a former vicar.</b>
------------	--

### 9.3 *Other housekeeping*

There are some other matters to be considered in the revision of the legislation.

The eventual legislation will need to have freshly drafted forms, and forms of declaration.

It will also be necessary to include some transitional provisions so that existing arrangements and entitlements are not disturbed.

## Appendix 1

### Terms used in relation to offices and roles

#### Current and recommended terms

Term	Current		Recommended	
	Meaning	How permitted to function	Meaning	How permitted to function
Assistant bishop	An assistant bishop under the Assistant Bishops Act	Licensed	An assistant bishop under the Assistant Bishops Act	Licensed
Designated bishop			An assistant bishop given responsibility by the Archbishop for one or more parishes, Authorised Anglican Congregations or other forms of missional activity within a defined geographical area	Licensed
Archdeacon	A person in Holy Orders appointed as such by the Archbishop	Licensed	A person in Holy Orders appointed as such by the Archbishop	Licensed
Vicar	A person instituted to a parish as incumbent or priest in charge <sup>50</sup>		A person in Holy Orders instituted to a parish (whether as incumbent or as priest in charge)	Licensed
incumbency committee	the committee responsible for identifying and proposing priests for appointment as vicars	Diocesan legislation		
lay members of incumbency committee	the lay members of the incumbency committee	Diocesan legislation		
<i>locum tenens</i>	a clerk appointed temporarily by the Archbishop to perform the ecclesiastical duties of the incumbency (literally, a placeholder)	Authorized		
Incumbent	In the Interpretation of Diocesan Legislation Act: A clerk instituted to a parish  In the Appointments Act: A clerk instituted to a parish with the rights of an incumbent as set out in the Act	Licensed	A vicar with the rights of an incumbent	Licensed
intentional interim vicar			an interim vicar appointed during an interregnum specifically to work with the parish through a period of reflection and discernment	Licensed
interim vicar			a priest appointed temporarily by the Archbishop to perform the	Authorized

<sup>50</sup> For the purposes of the Parish Governance Act the term “vicar” also includes an interim vicar and (if there is no interim vicar) the Archdeacon

Term	Current		Recommended	
	Meaning	How permitted to function	Meaning	How permitted to function
			duties of the vicar of a parish	
parish nominations committee			the committee responsible for identifying and proposing priests for appointment as vicars	Diocesan legislation
parish nominators			the lay members of the parish nominations committee	Diocesan legislation
Priest in charge	A clerk instituted to a parish without the rights of an incumbent	Licensed	A vicar without the rights of an incumbent	Licensed
Regional bishop	An assistant bishop so designated by the Archbishop	Licensed		

## **Appendix 2**

### **Archdeacons (Qualification) Act 1994**

#### AN ACT

relating to qualification for the office of archdeacon

BE IT ENACTED by the Archbishop, the Clergy and the Laity of the Anglican Church of Australia within the Diocese of Melbourne in Victoria duly met in Synod according to law as follows:

#### *Short title*

1. This Act may be cited as the **Archdeacons (Qualification) Act 1994**.

#### *Qualification for office*

2. Despite any rule or law of this Church to the contrary, a clerk who has been in Holy Orders for at least 6 years is eligible for appointment by the Archbishop to the office of archdeacon in this Diocese.
-



## Appendix 3

### PART A

**Table comparing Diocesan Tribunal legislation of the Metropolitan dioceses**

Topic	Melbourne	Sydney	Brisbane	Perth	Adelaide
<b>JURISDICTION</b>					
Classes of ecclesiastical offences		-		1	-
Additional offences for this Diocese/Jurisdiction					6, 6A
<b>THE CHARGE</b>					
Form and requirements of charge	15	5, 29			8
How to make a charge	15	6	7	4	
Who brings a charge	[11], 22		6	4	7
Fee paid to Diocese to lodge complaint	15				
Charge arising from secular proceedings			3(1)		8A
Whether time limit for charges	29	7; 30		19	
Process when charge received	16	9	14	5	8(3), 8(4)
Request for answer to charge		10, 11			
Archbishop may determine that charge will not proceed			11(2)		
Special processes for breach of faith ritual or ceremonial			8		
Amending a charge – by party		21	22		
Amending a charge – by Board of Enquiry	20				
Amending a charge – by Tribunal					
Withdrawing a charge		8			
<b>BOARD OF ENQUIRY – CONSTITUTING</b>					
Board of Enquiry - constituting	14	45, 46, 47	10(2) & (3)	2	5, 9
Board of Enquiry – casual vacancies			10(5) & (6)		
Board of Enquiry – declaration by members				10	17
Board of Enquiry – disqualification		48, 49			
Board of Enquiry – quorum		51	10(7)		
<b>BOARD OF ENQUIRY – FUNCTIONS AND POWERS</b>					
Board of Enquiry – reference	12, 18		11(1)		
Board of Enquiry – powers & procedure	19	31(2) – (4)	11(1)		10
Board of Enquiry – charge goes no further		33		6	11
Board of Enquiry – where sufficient evidence to proceed	21	34		8	12
Board of Enquiry – sending documents to Archbishop					13
<b>TRIBUNAL – CONSTITUTING</b>					
Tribunal – election, term of office, casual vacancies, etc	2, 3, 4, 6, 7, 8	37-40			4
Tribunal - President	6	35	20(2)		15
Tribunal - assembling		4, 36		9	14, 16
Tribunal – members to sign declaration					17
Tribunal – disqualification &c	9	41, 42			
Tribunal – quorum					
Tribunal – where member ceases to be member during hearing	3		20(5) & (6)		19(7), 19(7A)
<b>TRIBUNAL HEARING</b>					
Notice of hearing	24				18
Appointment of Advocate (prosecutor)	31	15	17; 25	3	

Topic	Melbourne	Sydney	Brisbane	Perth	Adelaide
Appearance and representation		14	21(1)	11, 17	
Procedure when charge admitted	17		14, 16	15	19(10)
Proceeding when Respondent does not appear	26	17	21(2)	14	19(6)
Directions hearing		16	-		6(4)
Onus of proof		22	-		
Where witnesses unable to attend				13	
Arbitration Act to apply	25				
Tribunal – oath or declaration by witnesses			23	12	
Evidence from secular proceedings			16; 28A		19A
Other evidence <i>prima facie</i> true			9, 44, 45, 46		
Tribunal – determination of procedural matters		44	26		19(3)
Tribunal procedure		27	23		
Special procedures where charge relates to doctrine			27		
Tribunal – written record of evidence					
Hearing public/in camera	30	18	28		
Suppression of names		19			
<b>TRIBUNAL — REACHING A VERDICT</b>					
Tribunal – majority required for verdict	5	43?	30, 31	16	19(9)
Tribunal – rehearing where Tribunal divided	28				
Tribunal – power to dismiss trivial matter					19(5)
<b>SENTENCING AND SUSPENSION</b>					
Sentence	27			17	20
Archbishop to determine sentence			34		
Suspension or mitigation of sentence			14, 35, 36, 37		
Suspension etc pending proceedings or sentence	23		43	18, 21	
<b>COSTS</b>					
Costs – of private complainant				22	19(12)
Costs – of Diocese				22	19(12)
Cost – of respondent	32A	25		22	19(2), 19(12)
Costs – for witnesses		26		22	
Costs – for tribunal members				22	22
<b>POWER TO MAKE RULES</b>					
Power to make rules	32	28	24	23	
<b>RIGHT OF APPEAL</b>					
Exclusion of certain appeals			39		
Right of appeal	13		39	20	21
<b>PROVISIONS IN SUPPORT</b>					
Register of Ecclesiastical Offences			40, 42		
Custody of documents	33		41		
Notices, service and time			47		23
Section 74 of Constitution to apply	35				

## **PART B**

### **Provisions relating to the Diocesan Tribunal for inclusion in new legislation**

#### **THE CHARGE**

Form and requirements of charge  
How to make a charge  
Who brings a charge  
Charge arising from secular proceedings  
Whether time limit for charges  
Process when charge received  
Request for answer to charge  
Special processes for breach of faith ritual or ceremonial  
Amending a charge  
Withdrawing a charge

#### **BOARD OF ENQUIRY — CONSTITUTING**

Board of Enquiry – constituting  
Board of Enquiry – casual vacancies  
Board of Enquiry – declaration by members  
Board of Enquiry – disqualification  
Board of Enquiry – quorum

#### **BOARD OF ENQUIRY – FUNCTIONS AND POWERS**

Board of Enquiry – reference  
Board of Enquiry – powers & procedure  
Board of Enquiry – charge goes no further  
Board of Enquiry – where sufficient evidence to proceed

#### **TRIBUNAL — CONSTITUTING**

Tribunal – election, term of office, casual vacancies, etc  
Tribunal – President  
Tribunal – assembling  
Tribunal – members to sign declaration  
Tribunal – disqualification etc  
Tribunal – quorum  
Tribunal – where member ceases to be member during hearing

#### **TRIBUNAL HEARING**

Notice of hearing  
Appointment of Advocate  
Appearance and representation  
Procedure when charge admitted  
Proceeding when Respondent does not appear  
Directions hearing  
Onus of proof  
Where witnesses unable to attend  
Commercial Arbitration Act to apply  
Tribunal – oath or declaration by witnesses

Evidence from secular proceedings  
Other evidence *prima facie* true  
Tribunal – determination of procedural matters  
Tribunal procedure  
Special procedures where charge relates to doctrine  
Tribunal – written record of evidence  
Hearing public/in camera  
Suppression of names

#### **TRIBUNAL — REACHING A VERDICT**

Tribunal – majority required for verdict  
Tribunal – power to dismiss trivial matter

#### **SENTENCING AND SUSPENSION**

Sentence  
Archbishop to determine sentence  
Suspension or mitigation of sentence  
Suspension etc pending proceedings or sentence

#### **COSTS**

Costs – of private complainant  
Costs – of Diocese  
Cost – of respondent  
Costs – for witnesses  
Costs – for tribunal members

#### **POWER TO MAKE RULES**

Power to make rules

#### **RIGHT OF APPEAL**

Exclusion of certain appeals  
Right of appeal

#### **PROVISIONS IN SUPPORT**

Register of Ecclesiastical Offences  
Custody of documents  
Notices, service and time