

# ANGLICAN DIOCESE OF MELBOURNE

## LEGISLATION RELATING TO THE ARCHBISHOPRIC AND CLERGY

### SUMMARY PAPER A– PRINCIPLES AND RECOMMENDATIONS

#### Principles<sup>1</sup>

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.

#### Recommendations

1. The new legislation be entitled “Melbourne Archbishopric and Clergy Act 2021”.
2. The Melbourne Archbishopric Act 1980 be re-enacted as part of the new Bill.
3. The Assistant Bishops Act 1985 be re-enacted as part of the new Bill.
4. The term “designated bishop” replace the term “regional bishop” in all Diocesan legislation.
5. The Archdeacons (Qualification) Act 1994 should be re-enacted as part of the new Bill.
6. 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.
7. 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.

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<sup>1</sup> These are the overarching principles for the development of the new legislation. They too are open for discussion and refinement.

8. 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.
9. The Archbishop's ability to appoint an interim vicar should take two forms—
  1. for up to 15 months without any associated process;
  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>2</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.
10. 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.
11. 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.
12. 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).
13. 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.
14. Assistant clergy in parishes should have the legal status of employees.
15. 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.
16. 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.
17. 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 paid through the MADC, subject to principles set out in the legislation.

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<sup>2</sup> and the archdeacon – see recommendation 31

18. At the time of making any determination in relation to the remuneration and other conditions of engagement or employment for clergy, the Archbishop in Council must have before it the written advice and recommendation of the MADC.
19. 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.
20. The *Superannuation of Clergy Act 2005* should be re-enacted in the new Bill.
21. The new Bill should require that parish nominators be communicant members of the church.
22. 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.
23. 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.
24. 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.
25. 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.
26. OPTION A  
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>3</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.

#### OPTION 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

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<sup>3</sup> plus any additional nominators for additional worship centres

from a panel for the whole Diocese elected by Synod) and 3 parish nominators;<sup>4</sup> each of whom has one vote.

27. 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.
28. 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.
29. 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.
30. 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.
31. 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.
32. 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.
33. 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
34. 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).
35. 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.
36. 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 is the first, second or third appointment.

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<sup>4</sup> plus any additional nominators for additional worship centres

37. 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.
38. 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.
39. 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.
40. The new Bill should contain a full suite of provisions in relation to the Diocesan Tribunal and its associated processes and in particular:
  - Should require the Board of Enquiry to determine whether every charge should proceed, other than a charge brought by the Archbishop;
  - Should have a President who is appointed by the Archbishop;
  - Should have four other members elected by the Synod, two clerical and two lay (but without a requirement that any be legal practitioners);
  - Provide for a streamlined process where a charge arises from a conviction or adverse findings by a court or Royal Commission.
41. The new Bill should not reenact the provisions of the Appointments Act relating to new areas parishes.
42. The new Bill should not reenact the provision of the Appointments Act relating to the recovery of property from a former vicar.