

Church Discipline Ordinance 2002

No 51,2002

Long Title

An Ordinance to provide a means for disciplining persons who fail to meet the standards of behaviour expected of ministers and persons holding positions in this Church and, where appropriate, for ensuring that such persons do not pose a risk to the safety of members of the public.

Preamble

The Synod of the Diocese of Sydney ordains.

1. Name

This Ordinance is the Church Discipline Ordinance 2002.

2. Definitions

(1) In this ordinance -

“1998 Act” means the Child Protection (Prohibited Employment) Act 1998 (NSW).

“Advisers” means the persons appointed under clause 16.

“Allegations” means allegations that a person has engaged in Unacceptable Behaviour and includes facts and circumstances that are not in dispute.

“Archbishop” means the Archbishop of the Diocese or in his absence his Commissary or if the See is vacant the Administrator of the Diocese.

“Child” means a person under the age of 18 years and “Children” has a corresponding meaning.

“Child Abuse” means conduct which would be regarded by right thinking members of the Church in this Diocese as abuse of a Child.

“Diocesan Tribunal” means the tribunal of the Diocese under section 53 of the Schedule to the 1961 Constitutions.

“Director” means the person appointed under clause 14(1).

“Disable Person” has the same meaning as in Rule 8 of Part 1 of the Supreme Court Rules 1970.

Note: Under the Supreme Court Rules 1970, a Disable Person means a person who is -

- (a) under the age of 18 years, or*
- (b) incapable of managing his or her affairs, or*

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- (c) *suffering from such handicap of body or mind, by way of coma, paralysis or otherwise, whether or not induced by any drug or by medical or other treatment, that he or she is unable to receive communications respecting his or her property or affairs, or to express his or her will respecting his or her property or affairs.*

“Experienced Lawyer” means -

- (a) a person who is or who has been a judge or justice of an Australian, State or Territorial Court or Tribunal; or
- (b) a person who has been admitted as a legal practitioner for at least 10 years.

“Exempt Conduct” means conduct which is the subject of a declaration by the Archbishop under clause 18.

“Injured Party” means a person -

- (a) who has been or claims to have been the subject of; or
- (b) whose Representative claims has been the subject of,

the Unacceptable Behaviour of a Licensed Minister or an Other Person.

“Investigator” means the person appointed by the Director to investigate the Allegations.

“Licensed Minister” means a person who holds a licence to which Article 3(4) of the Schedule to the 1902 Constitutions applies.

“Other Person” means a person other than a Licensed Minister who -

- (a) holds or has held a Position; or
- (b) is in Holy Orders, resident in the Diocese, and does not hold or has not held a Position; or
- (c) has requested that the Archbishop make a declaration under clause 18.

“Position” means any position of leadership within the Diocese and without limiting the generality of the foregoing includes each of the following -

- (a) an office;
- (b) membership of a body incorporated by or under the Bodies Corporate Act;
- (c) a churchwarden;

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- (d) membership of a parish council;
- (e) membership of any other board, council or committee established by the Synod, the Standing Committee, a regional council or a parish council;
- (f) an officer of the kinds specified in part 6 of the Church Administration Ordinance 1990;
- (g) an appointment by a rector, curate in charge, churchwarden or parish council.

“Prohibition” means a notice issued by the Archbishop under clause 6 or 12(1).

“Representative” means, in relation to a Disable Person,-

- (a) a parent or guardian; or
- (b) any person responsible for his or her welfare or acting on his or her behalf.

“Report” means a report under clause 7(3).

“Serious Offence” means -

- (a) a serious sex offence within the meaning of section 5 of the 1998 Act, or
- (b) a registrable offence within the meaning of the Child Protection (Offenders Registration) Act 2000 (NSW).

Note: In general these are sex offences or offences involving children which are punishable by imprisonment for 12 months or more.

“Sexual Misconduct” means sexual conduct which would be regarded by right thinking members of the Church in this Diocese as disgraceful and inconsistent with the standards to be observed by a Christian.

“Subject” means a Licensed Minister or Other Person who is alleged to have engaged in Unacceptable Behaviour.

“Tribunal” means a tribunal appointed under this Ordinance.

“Unacceptable Behaviour” means -

- (a) in the case of a person who is ordained -
 - (i) Sexual Misconduct or Child Abuse after ordination as a deacon; or
 - (ii) Sexual Misconduct which could constitute a Serious Offence or Child Abuse prior to ordination as a deacon which, at the time the Allegations are made is productive, or if known publicly would be productive, of scandal or evil report, other than Exempt Conduct; or

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- (iii) Sexual Misconduct not falling within paragraph (a)(ii) prior to ordination as a deacon where such ordination takes place after the date of assent to this Ordinance, which, at the time the Allegations are made is productive, or if known publicly would be productive, of scandal or evil report, other than conduct which prior to ordination as a deacon was fully disclosed in writing to the bishop by whom or on whose behalf the person was ordained and for which any appropriate reparation has been made; and
- (b) in the case of an Other Person who is not ordained -
 - (i) Sexual Misconduct or Child Abuse while or after holding a Position; or
 - (ii) Sexual Misconduct which could constitute a Serious Offence or Child Abuse prior to first holding a Position which, at the time the Allegations are made is productive, or if known publicly would be productive, of scandal or evil report, other than Exempt Conduct; or
 - (iii) Sexual Misconduct not falling within paragraph (b)(ii) prior to first holding a Position where the person first held a Position after the date of assent to this Ordinance which at the time the Allegations are made is productive, or if known publicly would be productive, of scandal or evil report, other than conduct which, prior to the issue of an authority under the Deaconesses, Readers and Other Lay Persons Ordinance 1981, was fully disclosed in writing to the Archbishop or Assistant Bishop and for which any appropriate reparation has been made; and
- (c) any threat, intimidation or inducement made by or at the direction or with the consent of a Subject intended -
 - (i) to dissuade another person from making Allegations to the Director; or
 - (ii) to persuade any person to withdraw Allegations; or
 - (iii) to persuade an Injured Party or a Representative to consent to the withdrawal of Allegations.

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(2) The notes in this Ordinance are for explanatory purposes only and do not form part of this Ordinance.

(3) Nothing in this Ordinance restricts any right which the employer of a Subject may have to terminate that employment.

3. Notification

(1) If the Director receives Allegations against a Licensed Minister or Other Person, or knows or reasonably suspects that a Licensed Minister or Other Person has engaged in Unacceptable Behaviour, which if substantiated would support a recommendation under clause 10(1)(b), (c) or (2), the Director should normally without unnecessary delay, invite the Injured Party or a Representative of that Injured Party to provide a written statement of the Allegations and, where appropriate assist or provide assistance for its preparation.

(2) Upon receiving such a statement the Director should normally provide a copy to the Subject without unnecessary delay and invite the Subject to provide a written response within 14 days or such longer period as the Director may allow.

(3) If there is no Injured Party or no Injured Party whose identity is known to the Director, the Director should normally without unnecessary delay provide the Subject with a written statement of the Allegations and invite the Subject to provide a written response within 14 days or such longer period as the Director may allow.

4. Investigation

(1) If the Subject's response admits the substance of the Allegations or any substantial part thereof, the Director must appoint an Experienced Lawyer under clause 7(1).

(2) If the Subject -

- (a) does not admit the substance of the Allegations or any substantial part thereof,
- (b) does not provide a response, or
- (c) is not promptly provided with a copy of any statement provided under clause 3(2) or 3(3),

the Director must promptly appoint an Investigator.

(3) The Investigator -

- (a) must carry out the investigation promptly;
- (b) may require an Injured Party or his or her Representative to verify the Allegations by statutory declaration;
- (c) must notify the Subject of the Allegations at an appropriate time if the Subject did not receive a written statement under clause 3(2) or 3(3);
- (d) must advise the Director if any one or more of the circumstances referred to in clause 4(5) are thought to exist;

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- (e) must make a written or, with the consent of the Subject, a taped record of all interviews with the Subject and provide the Subject with a copy of any such record;
 - (f) must allow each person interviewed to have another person present who is not likely to be a witness to the Allegations; and
 - (g) must forward to the Director without unnecessary delay a report setting out the results of the investigation together with signed copies of all records of interviews and any other relevant material.
- (4) The Archbishop and any person and/or body that appointed the Subject must provide the Investigator with any information that has been reasonably requested.
- (5) The Director, with the concurrence of a majority of the Advisers acting under clause 16(2), may decline to appoint an Investigator or revoke such an appointment -
- (a) if the Director considers that the Allegations to be investigated, are false, vexatious or misconceived or their subject matter is trivial;
 - (b) where the subject matter is under investigation by some other competent person or body or is the subject of legal proceedings;
 - (c) where the person making the Allegations or the Injured Party has failed to provide further particulars, or to verify the Allegations by statutory declaration;
 - (d) where the Director is requested by each Injured Party whose identity is known, or a Representative of each Injured Party, not to commence or continue an investigation;
 - (e) where there is insufficient evidence to warrant an investigation; or
 - (f) where the Allegations to be investigated are withdrawn pursuant to clause 13 and there is insufficient other evidence to warrant an investigation.
- (6) If the Allegations involve Child Abuse and the Director does not appoint an Investigator, or revokes such an appointment because the Director considers the Allegations to be investigated are false, vexatious or misconceived, the Director is to make and retain a written record of his or her reasons for forming that view.

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5. Conciliation

(1) The Director may implement conciliation between an Injured Party or a Representative of an Injured Party and the Subject before appointment of an Experienced Lawyer if the Director considers that conciliation could deal properly with the Allegations.

(2) The Director is not to implement conciliation where the Allegations -

- (a) involve Child Abuse;
- (b) involve Sexual Misconduct which could constitute a Serious Offence;
- (c) if substantiated before a Tribunal, would in the opinion of the Director be likely to result in the Tribunal making a recommendation in terms of clause 10(1)(b), (c) or (2); or
- (d) are of the same or substantially the same nature as Allegations made by any person which have previously been admitted by, or substantiated against, the Subject.

(3) The Director may defer or suspend an investigation under clause 4(2) if -

- (a) the Subject and each Injured Party to participate in the conciliation or a Representative of that Injured Party have -
 - (i) acknowledged there is a reasonable prospect of dealing properly with the Allegations through conciliation; and
 - (ii) agreed to participate in the process under this clause; and
- (b) the proposed process is likely to conclude within 1 month.

(4) The time fixed by clause 5(3)(b) may be extended by the Director with the agreement of at least 1 Injured Party or a Representative of that Injured Party and the Subject but not for more than a further 1 month.

(5) Where the Director has implemented conciliation under this clause -

- (a) no further action is to be taken under this Ordinance in respect to the Allegations at the conclusion of the process if -
 - (i) each Injured Party or a Representative of that Injured Party, and
 - (ii) the Subject, and
 - (iii) a majority of the Advisers acting under clause 16(2),

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are satisfied the process has properly dealt with the Allegations; and

- (b) in any other case, the Director must appoint an Experienced Lawyer under clause 7(1).

(6) Except as provided in clause 5(7), all communications whether written or oral that take place during conciliation under this clause other than any agreed outcome are to be treated as confidential by each person involved in the process and cannot be used in any -

- (a) investigation under this Ordinance,
- (b) hearing before the Diocesan Tribunal,
- (c) development review under the Parish Development Review Ordinance 2001,
- (d) licensing review under the Parish Relationships Ordinance 2001, or
- (e) action taken under the Parish Disputes Ordinance 1999.

(7) The outcome of conciliation under this clause is to be recorded by the Director and a copy provided to each person involved, the Archbishop and, as necessary for the purposes of this Ordinance, to any other person.

6. Interim Suspension and Prohibition

(1) If in relation to a Subject who is a Licensed Minister -

- (a) the Allegations relate to a Serious Offence -
 - (i) of which the Subject has been charged or convicted; or
 - (ii) in respect of which the Archbishop has received a report from an Experienced Lawyer that there is a prima facie case of the Subject having committed the offence but which does not state that having regard to all the evidence a tribunal would be unlikely to find that the Subject committed the offence; or
 - (iii) which the Subject has admitted having committed; and

- (b) the Archbishop has invited the Subject to show cause,

the Archbishop may, by notice in writing to the Subject given at any time thereafter and in a case under clause 6(1)(a)(ii) with the concurrence of a majority of the Advisers acting under clause 16(2), do either or both of the following -

- (c) suspend the licence of the Subject;
- (d) issue a Prohibition.

(2) A suspension and/or Prohibition issued pursuant to clause 6(1) expires -

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- (a) if the Archbishop appoints a person to promote a charge before the Diocesan Tribunal, at the conclusion of the first meeting of the Standing Committee after the charge is promoted;
 - (b) if the Tribunal discontinues a hearing under clause 9(10);
 - (c) if the Tribunal makes a recommendation under clause 10(1)(a), on receipt by the Archbishop of the Tribunal's report;
 - (d) when the Archbishop makes his decision under clause 11 and/or 12.
- (3) If in relation to a Subject who is an Other Person -
- (a) the Allegations relate to a Serious Offence -
 - (i) of which the Subject has been charged or convicted; or
 - (ii) in respect of which the Archbishop has received a report from an Experienced Lawyer that there is a prima facie case of the Subject having committed the offence but which does not state that having regard to all the evidence a tribunal would be unlikely to find that the Subject committed the offence; or
 - (iii) which the Subject has admitted having committed; and
 - (b) the Archbishop has invited the Subject to show cause, the Archbishop may by notice in writing to the Subject given at any time thereafter issue a Prohibition.
- (4) A Prohibition issued by the Archbishop pursuant to clause 6(3) expires at the following time -
- (a) if the Tribunal discontinues a hearing under clause 9(10);
 - (b) if the Tribunal makes a recommendation under clause 10(1)(a), on receipt by the Archbishop of the Tribunal's report;
 - (c) when the Archbishop makes a decision under clause 12;
- (5) The Archbishop may give notice of a suspension or Prohibition issued under this clause to such other persons as he considers necessary to give them proper effect.
- (6) A Prohibition issued under clause 6(1)(d) or (3) may be -
- (a) limited to specific Positions or in respect of all Positions; or
 - (b) subject to conditions or limitations.
- (7) During -
- (a) a suspension or Prohibition under this clause; or

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- (b) a period when a Subject voluntarily stands down from a Position while Allegations are dealt with under this Ordinance,

the Subject is entitled to whatever stipend, salary, allowances and other benefits the Subject would have otherwise received. The cost in respect of a Subject licensed to or employed by a parochial unit are to be met, or reimbursed, from funds under the control of the Synod.

(8) A person subject to a Prohibition issued under clause 6(1)(d) or (3) is suspended from any Position covered by the Prohibition and if appropriate the Position may be filled by a temporary appointment until the earlier of the expiry of -

- (a) the Prohibition; and
- (b) any term during which the Subject holds the Position.

(9) A person subject to a Prohibition issued under this clause is not eligible for a Position covered by the Prohibition.

7. Experienced Lawyer

(1) After any investigation required by clause 4 has been completed, the Director must appoint an Experienced Lawyer and must -

- (a) notify the Experienced Lawyer in writing of the identity of the Subject;
- (b) notify the Subject of the identity of the Experienced Lawyer;
- (c) notify both of all material relevant to the Allegations;
- (d) invite the Subject to provide any further material and make any written representations to the Experienced Lawyer within 28 days; and
- (e) request from the Experienced Lawyer a report under clause 7(3).

(2) The Experienced Lawyer may require an Injured Party to verify the Allegations by statutory declaration if this has not already been done.

(3) Within 42 days of receiving notification under clause 7(1)(c), or such longer period as the Director may allow, the Experienced Lawyer must report to the Director in writing -

- (a) whether there is prima facie evidence that the Subject engaged in Unacceptable Behaviour or committed an offence for which a charge could be promoted before the Diocesan Tribunal; and
- (b) if so provide
 - (i) particulars of the Unacceptable Behaviour and/or offence; and
 - (ii) advise if, in his or her opinion, having regard to all the evidence, a Tribunal is not likely to find that

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the Subject engaged in Unacceptable Behaviour and/or the Diocesan Tribunal is not likely to find that the Subject committed the offence as the case may be; and

- (c) if the Allegations involve Child Abuse, and there is not prima facie evidence that the Subject engaged in Unacceptable Behaviour or committed an offence, whether the Allegations should be considered false, vexatious or misconceived.
- (4) On receiving the Report, the Director must provide a copy to the Archbishop and the Subject.
- (5) If the Report states that -
- (a) there is prima facie evidence of the Subject having engaged in Unacceptable Behaviour, but
 - (b) having regard to all the evidence a Tribunal is not likely to find that the Subject engaged in Unacceptable Behaviour,

the Director may, with the concurrence of a majority of the Advisers acting under clause 16(2), act under clause 8 provided the Archbishop does not act under clause 7(6) or (8).

- (6) If the Report states that -
- (a) there is prima facie evidence of the Subject having committed an offence for which a charge could be promoted before the Diocesan Tribunal, but
 - (b) having regard to all the evidence the Diocesan Tribunal is not likely to find that the Subject committed an offence,

the Archbishop may within 28 days of receiving a copy of the Report in respect of an ordained person appoint a person to promote a charge against the Subject before the Diocesan Tribunal.

(7) If the Report states that there is prima facie evidence that the Subject engaged in Unacceptable Behaviour but does not include the opinion referred to in clause 7(5)(b) the Director must act under clause 8 but if clause 7(6) or (8) also applies the Director may act under clause 8 only if the Diocesan Tribunal has found the Subject guilty of an offence and, if appropriate, the Archbishop has given effect to any recommendation made by the Diocesan Tribunal relating to the charge.

(8) If the Report states that there is prima facie evidence that the Subject committed an offence but does not include the opinion referred to in clause 7(6)(b) the Archbishop must, within 28 days of receiving a copy of the Report, appoint a person to promote a charge against the Subject before the Diocesan Tribunal.

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(9) If the Diocesan Tribunal has found the Subject guilty of an offence the Director may act under clause 8 but only for the purpose of obtaining a Prohibition.

8. Appointment of Tribunal

(1) If the Director is required or decides to act pursuant to this clause, he must -

- (a) appoint a Tribunal;
- (b) notify the Subject and each Injured Party whose identity is known to the Director of such appointment; and
- (c) provide the Tribunal and the Subject with particulars of all Allegations known to the Director concerning the Subject and which the Tribunal is to investigate.

(2) A Tribunal comprises 3 persons appointed by the Director who collectively satisfy the requirements of clause 8(3).

(3) A Tribunal must include -

- (a) an Experienced Lawyer not being the Experienced Lawyer referred to in clause 7; and
- (b) a person who is or has been a Licensed Minister for at least 10 years; and
- (c) at least one man and one woman.

9. Investigation and Hearing by Tribunal

(1) Subject to clause 9(2) a Tribunal must investigate the Allegations referred to it and all other Allegations which come to its attention in the course of that investigation.

(2) A Tribunal is not required to investigate an Allegation while it is under active investigation by some other competent person or body or is the subject of legal proceedings.

(3) The Tribunal must observe the rules of procedural fairness.

(4) If the Tribunal forms the opinion that there is prima facie evidence of the Subject having engaged in Unacceptable Behaviour and the Subject denies any of the facts alleged the Tribunal must conduct a hearing. The Tribunal may receive evidence, examine witnesses and administer oaths or affirmations.

(5) The Director or the Tribunal may appoint an Experienced Lawyer to assist the Tribunal.

(6) The Subject is entitled to give evidence and make submissions to the Tribunal.

(7) Each Injured Party named in the Allegations or a Representative of each Injured Party, with the leave of the Tribunal, may make submissions.

(8) A person is not entitled to be represented by a person who is not a legal practitioner without the leave of the Tribunal.

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(9) The Tribunal may inform itself on any matter in such manner as it thinks fit.

(10) The Tribunal may discontinue a hearing if it concludes that the Subject cannot receive a fair hearing and where possible in the case of Allegations of Child Abuse must determine whether the Allegations are false, vexatious or misconceived.

10. Determinations and Recommendations of Tribunal

(1) If the Tribunal determines that the Subject engaged in Unacceptable Behaviour it must recommend to the Archbishop that -

- (a) no further action be taken in relation to the Allegations; or
- (b) in the case of a Licensed Minister -
 - (i) the licence of that person -
 - (A) be suspended and the term and conditions of the suspension; or
 - (B) be revoked; and/or
 - (ii) a Prohibition be issued and its terms; or
- (c) in the case of an Other Person, a Prohibition be issued, and its terms.

(2) The Tribunal may make other recommendations to the Archbishop.

(3) If the Allegations involve Child Abuse and the Tribunal makes a recommendation under clause 10(1)(a) that no further action be taken by the Archbishop in relation to the Allegations, the Tribunal must determine whether the Allegations are false, vexatious or misconceived.

(4) Any determination and recommendation of the Tribunal must be contained in a report which -

- (a) sets out the Tribunal's findings on material questions of fact;
- (b) refers to any evidence or other material on which the Tribunal's findings are based; and
- (c) gives reasons for the Tribunal's determination.

11. Suspension or Revocation of licence

(1) If a Tribunal recommends to the Archbishop that the licence of a Licensed Minister be suspended or revoked, the Archbishop-

- (a) must invite that person to show cause; and
- (b) thereafter -
 - (i) subject to clause 11(2), may by notice in writing to the person suspend that licence for such term and upon such conditions as the Archbishop may determine; or
 - (ii) may revoke that licence.

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(2) If a Tribunal recommends that the licence of a Licensed Minister be suspended and the term and conditions of the suspension -

- (a) the Archbishop may not suspend the licence for a longer term; and
- (b) the suspension must be subject to the recommended other conditions apart from any conditions which the Archbishop may impose.

(3) The Archbishop may give notice of a suspension or revocation of a licence under clause 11(1) to such other persons as the Archbishop considers necessary.

12. Prohibition

(1) If a Tribunal recommends that a Prohibition be issued, the Archbishop must invite the Subject to show cause and thereafter may by notice in writing to the Subject issue the Prohibition.

(2) The Archbishop may give notice of the Prohibition to such other persons as the Archbishop considers necessary.

(3) A Prohibition may be -

- (a) for a specified term;
- (b) indefinite;
- (c) limited to specific Positions or in respect of all Positions; or
- (d) subject to conditions or limitations.

(4) If a Tribunal recommends in relation to a Subject that a Prohibition be issued and also a term for the Prohibition or any conditions or limitations to be included in the Prohibition, then if the Archbishop issues a Prohibition -

- (a) the Archbishop may not issue a Prohibition for a longer term; and
- (b) the Prohibition must include the recommended conditions or limitations apart from any other conditions or limitations which he may include on the ambit of the Prohibition.

(5) A person is not eligible for a Position covered by a Prohibition.

(6) A person holding a Position vacates any Position covered by a Prohibition.

(7) The Archbishop may revoke a Prohibition issued under this clause with the concurrence of a majority of the Advisers acting under clause 16(2).

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13. Withdrawal

(1) Subject to clause 13(2), a person who has made Allegations may withdraw the Allegations before the Director appoints an Experienced Lawyer under clause 7(1) by written notice to that effect to the Director.

(2) If Allegations involve an Injured Party whose identity is known to the Director, the Allegations may be withdrawn under clause 13(1) only with the written consent of the Injured Party or a Representative of the Injured Party.

14. The Director

(1) The Archbishop is to appoint an Experienced Lawyer to be the Director on such terms and conditions as the Archbishop considers appropriate.

(2) If for any reason the Director is unable or unwilling to exercise a function of the Director under this Ordinance, the Archbishop may appoint another Experienced Lawyer to exercise the function.

15. Relationship between the Archbishop and Director

(1) The Director is to keep the Archbishop fully informed of -

- (a) any Allegations or knowledge or reasonable suspicion of Unacceptable Behaviour under clause 3(1) and any response provided by the Subject; and
- (b) any appointment and other action taken by the Director.

(2) The Director is to provide -

- (a) any other information reasonably requested by the Archbishop; and
- (b) make an annual report to the Standing Committee as to action taken under this Ordinance during the preceding year ended 30 June.

(3) The Archbishop and/or the person or body who appointed the Subject will provide information reasonably requested by the Director.

16. Advisers

(1) The Archbishop-in-Council shall from time to time appoint at least 3 Advisers and may revoke any such appointment as an Adviser at any time.

(2) The Advisers when acting collectively for the purposes of the Ordinance must include -

- (a) an Experienced Lawyer; and
- (b) a person who is or has been a Licensed Minister for at least 10 years; and
- (c) at least one man and one woman.

(3) A person ceases to be an Adviser if he or she -

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- (a) dies; or
- (b) resigns by writing addressed to the Diocesan Secretary, and unless the writing specifies a later date, the resignation takes effect when received by the Diocesan Secretary; or
- (c) becomes an insolvent under administration; or
- (d) becomes an incapable person, a patient, a protected person or a voluntary patient under any statute relating to mental health.

17. Allegations already dealt with

No action is to be taken under this Ordinance in respect of Allegations against a Subject if Allegations against that Subject have been previously dealt with under -

- (a) this Ordinance, or
- (b) the Church Discipline Ordinance 1996, or
- (c) subject to clause 7(9), the Tribunal Ordinance 1962, or
- (d) a formal investigation or inquiry with the authority of the Archbishop which concluded or was commenced prior to the date of assent to this Ordinance,

if the new Allegations are not materially different from such Allegations and unless the new Allegations are supported by apparently credible evidence of fresh facts likely to lead to a different result.

18. Exempt Conduct

(1) If prior to ordination as a deacon by or on behalf of the Archbishop, a person fully discloses in writing to the Archbishop conduct committed by that person which could constitute Child Abuse or a Serious Offence, the Archbishop, with the concurrence of a majority of the Advisers acting under clause 16(2), may make a declaration that the conduct is Exempt.

(2) If prior to being issued with an authority under the Deaconesses, Readers and Other Lay Persons Ordinance 1981, a person who is not ordained fully discloses in writing to the Archbishop conduct committed by that person which could constitute Child Abuse or a Serious Offence, the Archbishop, with the concurrence of a majority of the Advisers acting under clause 16(2), may make a declaration that the conduct is Exempt.

(3) If prior to being licensed by the Archbishop, a person who has been ordained by or on behalf of a bishop of a diocese other than the Archbishop and who has not previously been licensed by the Archbishop fully discloses in writing to the Archbishop conduct committed by that person prior to ordination as a deacon which could constitute Child Abuse or a Serious Offence, the Archbishop, with the concurrence of a majority of the Advisers acting under clause 16(2), may make a declaration that the conduct is Exempt.

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(4) The Archbishop is not to make a declaration that the conduct is Exempt -

- (a) if the person is a prohibited person within the meaning of the 1998 Act; and
- (b) unless the Archbishop and a majority of Advisors acting under clause 16(2) consider that the person -
 - (i) has made any appropriate reparation for the conduct;
 - (ii) does not pose a risk to the safety of any person; and
 - (iii) is fit to be ordained, to be issued with an authority or to be licensed by the Archbishop.

Note: Under the Child Protection (Prohibited Employment) Act 1998, a prohibited person means a person who, subject to some qualifications, has been convicted or found guilty of a serious sex offence or a registrable offence. In general these are sex offences or offences involving children which are punishable by imprisonment for 12 months or more.

(5) In deciding whether or not a person poses a risk to the safety of any person, the Archbishop and the Advisors are to take into account the following -

- (a) the seriousness of the conduct;
- (b) the age of the person at the time of such conduct;
- (c) the age of each victim at the time;
- (d) the difference in age between the person and each such victim;
- (e) the person's criminal record if any; and
- (f) such other matters as are considered relevant.

(6) If the Archbishop refuses to make a declaration under this clause then, subject to clause 18(7), the person is not entitled for 5 years to apply again for a declaration in respect of that conduct.

(7) If the Archbishop refuses to make a declaration under this clause because the person is a prohibited person within the meaning of the 1998 Act the person -

- (a) is entitled to seek a declaration under this clause after the person ceases to be a prohibited person under section 9 of the 1998 Act; and
- (b) is not entitled to apply for a declaration while the person remains a prohibited person under the 1998 Act.

19. Repeal and Transitional

(1) Subject to clause 19(2) -

- (a) the Church Discipline Ordinance 1996 is repealed; and

Church Discipline Ordinance 2002

(b) this Ordinance applies in respect of conduct whether occurring before, on or after the date on which this Ordinance receives assent.

(2) Any Allegations or part of any Allegations in respect of which the Archbishop has before the date of assent to this Ordinance appointed a person or persons to investigate under clause 3(1) of the Church Discipline Ordinance 1996 are to be dealt with under the Church Discipline Ordinance 1996 as if that ordinance had not been repealed.

(3) For the purposes of clause 14(1), the Director is the person who at the date of assent to this Ordinance has been appointed by the Archbishop to administer the Church Discipline Ordinance 1996.

I Certify that the ordinance as printed is in accordance with the Ordinance as reported.

R TONG
Deputy Chairman of Committees

We Certify that this Ordinance was passed by the Synod of the Diocese of Sydney on 21 October 2002.

C J MORONEY
M A PAYNE
Secretaries of Synod

I Assent to this Ordinance.

PETER F JENSEN
Archbishop of Sydney
22/10/2002