

Consultation on exposure draft bills for the Ministry Standards Ordinance 2017 Amendment Ordinance 2021 and Reportable Allegations and Convictions Ordinance 2021

(A report of the Standing Committee.)

Purpose

1. The purpose of this report is to update the Synod on progress in reviewing the *Ministry Standards Ordinance 2017* and to seek feedback on exposure draft bills for consideration at the September 2021 session of Synod.

Recommendations

2. Synod receive this report.
3. Synod invite its members to provide feedback on exposure draft bills for the *Ministry Standards Ordinance 2017 Amendment Ordinance 2021* and the *Reportable Allegations and Convictions Ordinance 2021* to the Diocesan Secretary by 30 June 2021.

Background

Terms of Reference

4. The primary terms of reference for review of the *Ministry Standards Ordinance 2017* (the “**MSO**”) are set out in the Synod Resolutions extracted in **Appendix 1** to this report. In summary, Synod requested that Standing Committee –
 - (a) review the MSO, particularly as it pertains to accusations of bullying, to ensure that rector development or other measures are recommended prior to more serious action,
 - (b) review generally the effectiveness of the MSO drawing on submissions from Synod members and bring appropriate recommendations to the next session of Synod, and
 - (c) make amendments to the MSO to facilitate compliance with changes in child protection laws, and
 - (d) consider including an encouragement for parties to consider resolving a grievance, complaint or dispute under the *Diocesan policy for dealing with allegations of unacceptable behaviour*.

Appointment of Committee

5. The Standing Committee appointed a subcommittee comprising the following persons (the **MSO Review Committee**) to review the *Ministry Standards Ordinance 2017* in response to the resolutions of the Synod and report back with recommendations: Mr Garth Blake SC, Mr Lachlan Bryant, The Rev Mark Charleston, Mr Michael Easton (Chair), The Rev Tom Hargraves, The Rev Mamie Long, Mr Douglas Marr, The Very Rev Kanishka Raffel and Mr Craig Schaffer. The MSO Review Committee was also assisted by Ms Elenne Ford (PSU Consultant) and Mr Steve Lucas (SDS Senior Legal Counsel).

Submissions from Synod Members

6. Synod Resolution 25/19 called for feedback from Synod Members. The request for feedback was included in the Synod Circular sent out by the Diocesan Secretary following the 2019 session of the Synod. Two submissions were received in response to this request.
7. The MSO Review Committee considered that further consultation was required. The following questions were emailed to licensed clergy, lay ministers and Synod members inviting further feedback by 13 May 2020. This request elicited a further 22 submissions. The recommendations in the submissions are summarised in the table in **Appendix 2**.

Exposure Draft Bills

8. The MSO Review Committee has prepared exposure drafts for two bills that are proposed for consideration at the session of Synod in September 2021.
9. The first is a bill for the *Ministry Standards Ordinance 2017 Amendment Ordinance 2021* (the **MSO Bill**) (**Appendix 3**), which addresses the requests made by the Synod. The second is a bill for the *Reportable Allegations and Convictions Ordinance 2021* (the **RAC Bill**) (**Appendix 4**), which is to facilitate compliance with the reportable conduct scheme in the *Children's Guardian Act 2019 (NSW)*.
10. Synod members are requested to provide any feedback on the exposure drafts by 30 June 2020. The feedback will be taken into account in finalising the bills for consideration by the Synod in September.

Explanation

Pre-complaint process

11. The primary amendment proposed in the MSO Bill is the insertion of a pre-complaint process as a new clause 12 of the MSO. The main features of the pre-complaint process are as follows:
 - (a) The pre-complaint process applies if the Director of Professional Standards directs a prospective complainant and/or prospective respondent to undertake the process.
 - (b) The nature of the pre-complaint process is to be set out in the direction. Pre-complaint processes might include, but are not limited to, conciliation, a facilitated discussion or individual counselling.
 - (c) The Director cannot make a pre-complaint direction if the subject-matter of the complaint includes serious child related conduct or sexual abuse, or if the direction could otherwise give rise to a material risk to the safety of one or more persons.
 - (d) The process can only be required prior to a formal complaint being made in the manner set out in clause 10 of the MSO. If a complaint has already been made, the Director would have the option of instead recommending conciliation under the existing clause 18B in the MSO.
 - (e) The pre-complaint process in clause 12 will be mandatory if the Director makes a direction. If a person later makes a complaint in relation to the same subject-matter, it must be declined if the Director is of the opinion that the complainant has not taken reasonable steps in response to an earlier direction under clause 12.
 - (f) The Director will have the power to revoke or amend a direction after it has been given.
 - (g) The costs of the pre-complaint process are to be met from funds under the control of the Synod if the Director so determines and the Director approves the costs before they are incurred. The primary costs are likely to be the appointment of a mediator and/or a counsellor.
 - (h) Allegations of misconduct that are subject to a pre-complaint process can still be dealt with under the MSO, provided that the prospective complainant participated in the pre-complaint process by taking reasonable steps in response to the direction.

Consultation with the Regional Bishop

12. Clause 14 of the MSO is a 'marshalling provision' that sets out the actions that the Director can undertake to deal with a complaint. The MSO Bill will require the Director to consult with the relevant Regional Bishop before taking any of the following actions:
 - (a) Referring the complaint to the PSC with a recommendation that the respondent undertake training or that the parties undertake conciliation (cl 14(a)).
 - (b) Referring the complaint to the PSC with a recommendation that the complaint be declined or deferred (cl 14(d)).
 - (c) Referring the complaint to an adjudicator (in the case of an unpaid church worker) (cl 14(h)).
 - (d) Investigating or appointing a person to investigate a complaint (cl 14(i)).
13. This amendment was recommended by the Episcopal Team. They thought it was generally helpful for the Regional Bishop to have some advanced warning before significant events happen in a parish in their Region. The Regional Bishop may also have some insights or suggestions about how

particular actions might be implemented or decisions announced that could assist the Director. The Bishop's role is merely one of consultation. The Director will not in any way be bound by the views or suggestions of the Regional Bishop.

Announcements

14. From time to time it may be necessary or helpful for an announcement to be made in a Parish regarding a particular complaint, for example to avoid misinformation spreading or to at the end of the process to explain the outcome.
15. Persons carrying out functions or duties under the MSO are under a duty of confidentiality in relation to the information that they receive in relation to a complaint (cl 104(1)). Both the Professional Standards Committee and a Church Authority (usually the Archbishop) have power to authorise information to be released (cl 104(2) and cl 106). Announcements in a Parish can be made under this power. It is proposed to amend clause 106 to include an express reference to public announcements in the relevant church for the avoidance of doubt.
16. This amendment was recommended by the Episcopal Team.

Other Amendments

17. The MSO Bill will also renumber some of the clauses in Part 3A. This is a minor changes to better reflect the sequence of the process in the numbering.

Review of the Diocesan policy for dealing with allegations of unacceptable behaviour

18. Synod Resolution 51/19 included a request for review of the *Diocesan policy for dealing with allegations of unacceptable behaviour* (the **Policy**) and consideration of ways to encourage parties to resolve disputes via the Policy.
19. When a revised form of the Policy was adopted by the Synod in 2015 by resolution 46/15, the Synod requested the Standing Committee to review the policy after a period of 5 years from its commencement. A review was conducted in the latter half of 2020 by a separate committee of the Standing Committee. The MSO Review Committee provided feedback to this committee in relation to its review of the Policy.
20. The Standing Committee made significant amendments to the structure and content of the Policy at its meeting on 21 February 2021. The amendments make the Policy more viable as an alternative to the MSO for matters that are more in the nature of disputes than issues giving rise to questions of misconduct and fitness. The main features of the amended Policy in this respect are –
 - (a) The scope of matters that can be considered under the Policy is now wider. The only matters that are expressly excluded are sexual misconduct, misconduct involving a child, criminal conduct and professional misconduct.
 - (b) In all other cases a person will have a choice about whether to utilise the Policy or not and can make a complaint under the MSO instead at any time if they wish. In addition, if the Regional Bishop considers that the matter raises fitness questions rather than issues of dispute, he can refer it to the Director to be dealt with under the MSO instead.
 - (c) The process at the Diocesan Resolution stage of the Policy now includes an information gathering exercise where a nominee of the Regional Bishop (most likely the Parish HR Partner, Vikki Napier or a Regional Archdeacon) prepares a fact finding report that is then reviewed by the Regional Bishop with a representative of the PSU. The intention is that this will provide more rigour and objectivity to the process and give confidence that fair and effective outcomes can be achieved through the process.
21. To safeguard the integrity of the process and to encourage the parties to speak openly, the information or records arising from the processes under the Policy will not be made available to the PSU in the event that the subject-matter becomes a complaint under the MSO. An exception to this is that for a matter under Step 3 of the Policy, the Regional Bishop will notify the PSU of the date an allegation is

received and the name of the person against whom it is made. In this way the PSU will be able to see if a person is the subject of repeat allegations and notify the Regional Bishop accordingly.

22. The amended Policy is now in effect and can be accessed on the SDS website [here](#).
23. The MSO Bill also references the Policy in clause 9(2), stating that a person wishing to make a complaint under the MSO should consider whether having regard to the nature of their proposed complaint, it would be preferable to first attempt to resolve any matters in dispute with the church worker through the Policy.

Other matters under consideration by the MSO Committee

24. Currently under clause 84 of the MSO applications made by respondents for the reimbursement of reasonable legal costs that exceed the scale of costs are considered and determined by the whole of the Standing Committee. The MSO Committee is considering whether it would be preferable to amend clause 84 to provide for the Standing Committee to appoint a subcommittee to consider and determine the applications instead.

Reportable Allegations and Convictions Ordinance 2021

32/19 Compliance with the Children's Guardian Bill 2019 (NSW)

25. The *Children's Guardian Act 2019 (NSW)* (the **CG Act**) was amended with effect from 1 March 2020 to include a reportable conduct scheme for monitoring how certain organisations (including religious bodies) investigate and report on certain allegations and convictions made against their employees, volunteers and certain contractors who provide services to children.
26. The scheme requires those persons who are required to hold a Working With Children Check by the organisation to notify the Head of the organisation. The Head then has an obligation to report to the Children's Guardian, undertake a risk assessment, conduct an investigation and report the findings to the Children's Guardian. Certain standards and timeframes are required to be met in relation to the investigation and report.
27. Broadly speaking, the current processes under the MSO and the category of "serious child-related conduct" (defined in section 7 of the MSO) are consistent with the requirements in the CG Act. However some refinements are needed to better align the meaning of some terms and to clarify the obligations and functions of certain officeholders.
28. The RAC Bill provides that the Archbishop is the Head of the Anglican Church Diocese of Sydney for the purposes of the CG Act and that he may delegate his functions to any person or body and may revoke those delegations at any time. It is intended, and expected, that the Archbishop will delegate his functions to the PSU and to bodies or persons exercising responsibilities under the MSO.
29. Under the RAC Bill, "the Diocese" will not include schools or organisations unless they are declared to form part of the Diocese by the Standing Committee. Schools and organisations will be required to manage their own compliance with the CG Act unless special arrangements are made. Schools have been subject to the reportable conduct scheme for some time and will have their own processes in place already.
30. The RAC Bill clarifies that when a person is an "employee" of the Diocese for the purposes of the CG Act by reference to the requirement for a person to hold an unconditional Working With Children Check in the *Safe Ministry to Children Ordinance 2020*. It should be noted that the meaning of "employee" in this context is wider than its ordinary meaning and includes volunteers who are required to hold a WWCC clearance.
31. The RAC Bill also sets out when and in what circumstances an employee will have an obligation to report certain matters to the Archbishop (or his delegate). It will also set out the actions that the Archbishop (or his delegate) must take in respect to those reports. These obligations parallel to the obligations under the CG Act.

Resourcing the Professional Standards Unit

25/19 Resourcing the Professional Standards Unit

32. Synod resolution 25/19 requests the Standing Committee to consider “whether the Professional Standards Unit is sufficiently resourced for its role in the operation of the ordinance”. The Committee will consider this matter as a second step once the proposed amendments to the MSO have been finalised. This will enable any proposed changes to the role of the PSU to be taken into account in determining the resourcing that will be required to perform that role.

For and on behalf of the Standing Committee.

DANIEL GLYNN
Diocesan Secretary

6 April 2021

Terms of Reference

1. Synod Resolutions

4/19 Staff management training

'Synod –

- (a) notes that while many rectors have participated in staff management training, the majority have not;
- (b) encourages rectors who have not already done so, to participate in staff management training as a matter of urgency;
- (c) requests the Safe Ministry Board, regularly include items relating to staff management in the content for the mandated triennial Faithfulness in Ministry training, noting that the 2020 Faithfulness in Ministry training will focus on staff management, and bullying in particular;
- (d) requests Ministry Training and Development to include appropriate training on the Ordinances relevant to Assistant Ministers as part of the post-ordination Ministry Development program for deacons;
- (e) recommends to the Archbishop that licences for Assistant Ministers, issued at the request of a rector, have an option for a specified term, with the minimum term being two years; and
- (f) requests the Ministry Standards Ordinance Review Committee to further review the *Ministry Standards Ordinance 2017*, particularly as it pertains to accusations of bullying, to ensure that rector development or other measures, are recommended prior to more serious action.'

25/19 Review of Ministry Standards Ordinance 2017

'Synod, noting recommendation (f) of the report, "Assistant Ministers Ordinance 2017 Amendment Ordinance 2019", together with the Ministry Standards Ordinance 2017 Amendment Ordinance 2019, requests the Standing Committee to additionally undertake a further review of the Ministry Standards Ordinance 2017 and its operation, drawing on submissions to be invited from members of Synod, to determine –

- (a) the degree to which the ordinance has been successful in overcoming the perceived weaknesses in the *Discipline Ordinance 2006*, as outlined in the report *Ministry Standards Ordinance 2017* presented to Synod during its 2017 session,
- (b) whether any further weaknesses remain in the ordinance (in its amended form), and
- (c) whether the Professional Standards Unit is sufficiently resourced for its role in the operation of the ordinance,

and to bring any appropriate recommendations to the next session of Synod.'

32/19 Compliance with the Children's Guardian Bill 2019 (NSW)

'Synod requests the Standing Committee to make amendments to the *Ministry Standards Ordinance 2017* to facilitate compliance with the *Children's Guardian Bill 2019*, if it is passed by the NSW Parliament.'

51/19 Further review of the Ministry Standards Ordinance 2017

'Synod, noting the Biblical imperative in 1 Timothy 5 and Matthew 18 outlining how to resolve disputes, grievances and complaints between brothers and sisters in Christ, requests Standing Committee consider –

- (a) a further review of the *Ministry Standards Ordinance 2017* to consider including an encouragement for parties to consider resolving a grievance, complaint or dispute under the Diocesan policy for dealing with allegations of unacceptable behaviour, and
- (b) a further review of the intersection of the *Ministry Standards Ordinance 2017* and the Diocesan policy for dealing with allegations of unacceptable behaviour to consider if a further mechanism would be preferable to support the resolution of grievances, complaints and disputes.'

Submissions

	Summary of submissions and recommendations
1.	<p>1. A review of church governance with a view to reducing adversarial and secretive behaviours, and instituting greater transparency and accountability at all levels,</p> <p>2. A review of the selection and training of people for ordination that will lead to the appointment of suitably trained and integrated people to lead the church,</p> <p>3. A review of the teaching programmes at Moore College with a view to making changes to the curriculum that will align the College better with the needs of the church and its mission, and</p> <p>4. Develop an approach to resolving complaints of bullying that can be enacted before the situation becomes calamitous.</p>
2.	<p>Case study based online training run every 3 years as a component of compulsory training for clergy.</p> <p>Resources on the Safe Ministry website on what to do if experiencing or accused of bullying.</p>
3.	<p>Training covering – identifying and preventing bullying, standards of behaviour expected, reporting and managing bullying, where to get information and advice, communication, managing situations and giving feedback.</p> <p>Training for new clergy prior to employment in a parish. Also train wardens, youth leaders etc so there is a common understanding.</p> <p>A bullying policy – commitment to a standard of behaviour.</p> <p>Ideally instances of bullying should be resolved within a parish and done in a parish, but serious cases could be provided to independent training experts.</p> <p>Mentors for clergy.</p>
4.	<p>Replace unlimited tenure for rectors with fixed term appointments subject to a substantial congregational vote necessary to renew the term.</p> <p>Strengthen bishops ability to intercede on behalf of congregants</p>
5.	<p>Create structured prevention and response for dealing with complaints.</p> <p>Avoid misuse of term 'bullying' by defining it clearly in the MSO.</p>
6.	<p>Release something for our congregations to take notice of, similar to the Domestic Violence resources released last year.</p>
7.	<p>Accountability for PSU, PSC and PSB.</p> <p>Pastoral care for respondents and their families.</p> <p>Opportunities for reconciliation between the parties.</p> <p>Shorten the time it takes to resolve complaints.</p> <p>Allow respondents to nominate supporters who they would like interviewed.</p> <p>Improve the manner of the PSU and PSC's engagement with respondents and witnesses.</p>
8.	<p>Training –</p> <ul style="list-style-type: none"> • Mandatory formal conflict resolution training, • self-awareness training,

	<ul style="list-style-type: none"> • training on giving and receiving feedback, • training to enable ministry teams to set role and performance expectations (coupled with submitting these to the bishop to confirm their reasonableness), • more expensive training on what is and isn't reasonable behaviour (with examples) (not online training), • training for parishioners on identifying bullying and the resources available. <p>Obstacles to reporting –</p> <ul style="list-style-type: none"> • encourage speaking to someone else to assess if something is bullying or produce a guide to aid people's thinking. <p>Support –</p> <ul style="list-style-type: none"> • Pastoral support by an independent person • Counselling • Financial support where relevant.
9.	Training for clergy on claiming expenses (to reduce conflict with Treasurers etc).
10.	The MSO's should more clearly identify which roles within a diocesan school are subject to its provisions.
11.	<p>A clear stand against bullying that enables victims of bullying to feel protected as they come forward.</p> <p>PSU too blunt an instrument – too complainant focussed, process too long, complaints should be resolved as speedily as possible.</p>
12.	<p>Clarify expectations of behaviour in a church community (e.g. Gen Syn – 'Being Together').</p> <p>Encourage a person to first seek to earnestly resolve the matter with the individual concerned. Do this by providing access to resources and training around conflict resolution supported by professional mediation if required.</p> <p>Require complainants to evidence their efforts to resolve the dispute/bullying claim in line with Jesus' teaching in Matt 18:15-17 before a complaint can proceed.</p>
13.	<p>The legal process of the MSO does not encourage reconciliation or the development of rectors. A more nuanced approach is needed.</p> <p>Separate the procedures around bullying accusations from the current Ministry Standards Ordinance. Deal with matters earlier and more quickly. Assemble a group of professional from various contexts and attempt to harmonise and adapt their practices having regard to the following theological imperatives:</p> <ul style="list-style-type: none"> • reconciliation, • repentance and forgiveness, • healing, • provide care and protection for the vulnerable (both complainant and respondent), • a process to enable progress and development, • facilitate what is helpful and healthy for the church community. <p>Staff development – also to address expectations mismatch between generations.</p>
14.	<p>Better communicate the standard of conduct expected of clergy.</p> <p>Rigorous training involving workbooks, videos and role play.</p> <p>A support team for both the complainant and the respondent. Making Christian counsellors available to both.</p>

	<p>Confidentiality needs to be followed more rigorously by the PSU to protect all parties.</p> <p>Witnesses should sign the record of conversation with the investigator to confirm its accuracy.</p> <p>Reconciliation as part of the process – use of mediators.</p>
15.	Apply the NSW Dept of Health approach to bullying (links provided in submission).
16.	Address the power imbalance – being one of the main obstacles to reporting (especially in an episcopal denomination).
17.	<p>The process should encourage reconciliation.</p> <p>Respondents should be more informed about complaints and the outcome if it does not proceed.</p>
18.	Professional supervision - having a Senior clergy member listen and reflect, guide and encourage me and my ministry has been invaluable.
19.	Awareness training for assistant ministers on the ordinances and options available to them.
20.	<p><i>Submission lists a range of complications in relationships related to the Anglican system. Summary comment – “The challenge with understanding bullying is our context is that sometimes it is a result of moral failure (will) and sometimes it is a result of a lack of capability (skill). The above unique elements of our system exacerbate and complicate how we investigate and address bullying leaving little room for nuance.”</i></p> <p>Training –</p> <ul style="list-style-type: none"> • Understanding what constitutes bullying (especially in the context of performance management and feedback). • How to give feedback, coach, set clear expectations and manage underperformance. (To overcome over spiritualising the treatment of underperformance – prayer and bible study to resolve it can give the impression it’s a sin rather than a skills issue). <p>Resolve ambiguities in the accountability structure to avoid use of the MSO as the ‘nuclear option’. Bishops can’t coach and mentor as they have no formal authority.</p> <p>The PSU is designed to deal with moral failings. There is a need for mechanisms to deal with skill and self-awareness failures.</p> <p>The most significant issue is the lack of accountability for Rectors – structural change needed. If this cannot be achieved informal practices are required (e.g., Rectors develop own accountability structures to get feedback and nominators only nominate Rectors that have a record of setting rigorous accountability for themselves; parish councils and wardens to conduct annual feedback meeting with the Rector and Bishop).</p> <p>Resources for clergy:</p> <ul style="list-style-type: none"> • 360 and self-assessment tools (I can give specific recommendations if you are interested) • Psychometric testing • Training in management 101 for rectors • Executive coaching • Clergy Assistance Program (extended to all church workers) • DeGroat, C., (2020) “When Narcissism comes to the Church”, IVP. <p>Support for those involved in bullying:</p> <ul style="list-style-type: none"> • Counselling • Mediation • Clergy Assistance Program for all church workers.

21.	<p>Recommends the Safe Work Australia Guide for Preventing and Responding to Workplace Bullying.</p>
22.	<p><i>Submission was made orally.</i></p> <p>Cover bullying in more detail in Safe Ministry Training.</p> <p>A MTC course for clergy on what constitutes bullying, how to avoid it etc.</p> <p>A capacity for anonymous reports to be made (to overcome the obstacle of people being fearful of being a whistleblower in their own church).</p> <p>Resources – Beyond Blue, Dr Valery Ling (Centre for Effective Living)</p>

Ministry Standards Ordinance 2017 Amendment Ordinance 2021

No , 2021

Long Title

An Ordinance to amend the *Ministry Standards Ordinance 2017*.

The Synod of the Diocese of Sydney Ordains as follows.

1. Name

This Ordinance is the Ministry Standards Ordinance 2017 Amendment Ordinance 2021.

2. Amendments to provide options for resolving issues in respect to certain complaints

The *Ministry Standards Ordinance 2017* is amended as follows –

- 5 (a) insert the words “including complainants, respondents and Church bodies” at the end of subclause 2(b),
- (b) insert the following new definitions in clause 4(1) –
- 10 “*Diocesan policy for dealing with allegations of unacceptable behaviour*” means the policy of this name that was adopted by resolution 46/15 of the Synod, as amended from time to time.’,
- “*Standing Committee*” means the Standing Committee constituted under the Standing Committee Ordinance of 1897.’
- (c) insert following new subclause (2) in clause 9 (and number the existing text in that clause as subclause (1)) –
- 15 ‘(2) A person who proposes to make a complaint under this Ordinance should consider whether having regard to the nature of the proposed complaint it would be preferable to first attempt to resolve any matters in dispute with the church worker through the *Diocesan Policy for dealing with allegations of unacceptable behaviour*.’,
- (d) renumber the existing clause 12 as clause 10 (and consequentially renumber the existing clauses 10 and 11 as clauses 11 and 12 respectively),
- (e) substitute the renumbered clause 12 with the following –
- 25 **‘12. Pre-complaint process**
- (1) The Director must use reasonable endeavours to explain the processes set out in this Ordinance to a prospective complainant.
- (2) Prior to formally receiving a complaint, the Director may direct a prospective complainant and/or a prospective respondent, to take reasonable steps to resolve the issues that are, or may be, in dispute between them in such manner as is specified by the Director, which may include but is not limited to conciliation, a facilitated discussion or individual counselling.
- 30 (3) The Director must not give a direction under subclause (2) if –
- (a) the subject matter of the complaint may include serious child related conduct or sexual abuse, or
- (b) if the direction could otherwise give rise to a material risk to the safety of one or more persons.
- 35 (4) The Director may revoke or amend a direction given under subclause 12(2) by notice in writing to the prospective complainant and prospective respondent.
- (5) The costs of any processes undertaken under this clause are to be met from funds under the control of the Synod if so determined by the Director and subject to the Director approving any such costs before they are incurred.
- 40

(6) If a complaint is not made in relation to any subject-matter that is dealt with under a process under this clause –

(a) any misconduct the subject of the prospective complaint is not taken to have already been dealt with under this Ordinance, and

(b) the Director is not prevented from making a complaint in respect to the subject-matter if he or she considers that a complaint should be made having regard to the overriding purposes of this Ordinance set out in clause 2.’,

(f) number the existing text in clause 14 as subclause (1) and insert the following as a new subclause (2) –

‘(2) The Director must consult the relevant Regional Bishop before taking the course of action in either subclause (1)(b), (d), (h) or (i)’.

(g) insert the following at the end of clause 15 before the full-stop –

‘or if the complainant has not, in the opinion of the Director, taken reasonable steps in response to a direction made under clause 12(2).’, and

(h) insert the following at the end of clause 106 before the full-stop –

‘including a public announcement in the relevant church.’

3. Amendments to facilitate compliance with the Children’s Guardian Act 2019

The *Ministry Standards Ordinance 2017* is further amended by substituting the text in clause 7 with the following –

‘Serious child-related conduct means –

(a) conduct that is sexual misconduct committed against, with or in the presence of a child, including grooming of a child, or any serious physical assault of a child by a person –

(i) when engaged in child-related work in the Diocese, or

(ii) who –

(A) is in child-related work in the Diocese at the time a complaint concerning their conduct is made, or

(B) has performed child-related work in the Diocese at any time in the two years prior to the date that a complaint concerning their conduct is made, and

(b) conduct or convictions that are reportable under the *Children’s Guardian Act 2019*.’

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

Chair of Committee

I Certify that this Ordinance was passed by the Synod of the Diocese of Sydney on 2021.

Secretary

I Assent to this Ordinance.

Archbishop of Sydney

/ /2021

Reportable Allegations and Convictions Ordinance 2021

No. _____, 2021

Long Title

An Ordinance to facilitate compliance with the *Children's Guardian Act 2019* in relation to reportable allegations and reportable convictions in respect to certain persons within the Diocese.

The Synod of the Diocese of Sydney Ordains as follows.

1. Name

This Ordinance is the Reportable Allegations and Convictions Ordinance 2021.

2. Interpretation

(1) In this Ordinance –

CG Act means the *Children's Guardian Act 2019*, as amended from time to time.

Children's Guardian means the period holding office as the Children's Guardian under the CG Act.

Diocese means the Anglican Church Diocese of Sydney.

WWCC Employee means an individual who holds, or is required by the religious body to hold, a working with children check clearance for the purpose of undertaking ministry in the Diocese.

(2) A reference in this Ordinance has the same meaning as it has in the *Children's Guardian Act 2019* as amended from time to time.

Note: The *Children's Guardian Act 2019* includes the following definitions –

Assault means—

(a) the intentional or reckless application of physical force without lawful justification or excuse, or

(b) any act which intentionally or recklessly causes another to apprehend immediate and unlawful violence.

Examples of assault—

1 hitting, striking, kicking, punching or dragging a child

2 threatening to physically harm a child

Employee, for a religious body, means an individual who holds, or is required by the religious body to hold, a working with children check clearance for the purpose of engagement with the religious body.

Ill-treatment, of a child, means conduct towards a child that is unreasonable and seriously inappropriate, improper, inhumane or cruel.

Examples of ill-treatment—

1 making excessive or degrading demands of a child

2 a pattern of hostile or degrading comments or behaviour towards a child

3 using inappropriate forms of behaviour management towards a child

Neglect, of a child, means a significant failure to provide adequate and proper food, supervision, nursing, clothing, medical aid or lodging for the child, that causes or is likely to cause harm to a child, by—

(a) a person with parental responsibility for the child, or

(b) an authorised carer of the child, or

(c) an employee, if the child is in the employee's care.

Examples of neglect—

1 failing to protect a child from abuse

2 exposing a child to a harmful environment, for example, an environment where there is illicit drug use or illicit drug manufacturing

Reportable allegation means an allegation that the Employee has engaged in conduct that may be reportable conduct, whether or not the conduct is alleged to have occurred in the course of the Employee's employment with the religious body and whether or not the allegation relates to conduct occurring before the commencement of the Act.

Reportable conduct means the following conduct, whether or not a criminal proceeding in relation to the conduct has been commenced or concluded—

- (a) a sexual offence,
- (b) sexual misconduct,
- (c) ill-treatment of a child,
- (d) neglect of a child,
- 5 (e) an assault against a child,
- (f) an offence under section 43B or 316A of the *Crimes Act 1900*,
- (g) behaviour that causes significant emotional or psychological harm to a child.

Examples of indicators of significant emotional or psychological harm for paragraph (g)—

- 1 displaying behaviour patterns that are out of character
- 10 2 regressive behaviour
- 3 anxiety or self-harm

Reportable conduct does not include—

- (a) conduct that is reasonable for the purposes of discipline, management or care of a child, having regard to—
 - 15 (i) the age, maturity, health or other characteristics of the child, and
 - (ii) any relevant code of conduct or professional standard, or
- (b) the use of physical force if—
 - (i) in all the circumstances, the physical force is trivial or negligible, and
 - (ii) the circumstances in which it was used have been investigated and the result of the investigation has been recorded in accordance with appropriate procedures, or
- 20 (c) conduct of a class or kind exempted from being reportable conduct by the Children’s Guardian under section 30.

Example of conduct for paragraph (a)— a school teacher raising his or her voice in order to attract attention or restore order in a classroom

Examples of conduct for paragraph (b)—

- 25 1 touching a child in order to attract the child’s attention
- 2 momentarily restraining a child to prevent the child hurting themselves or others
- 3 touching a child to guide or comfort the child

Reportable conviction means a conviction, including a finding of guilt without the court proceeding to a conviction, in this State or elsewhere, of an offence involving reportable conduct—

- 30 (a) in relation to an employee of a Schedule 1 entity—whether or not the conduct occurred in the course of the employee’s employment with the Schedule 1 entity, or
- (b) in relation to an employee of a public authority—
 - (i) if the employee holds, or is required to hold, a working with children check clearance for the purpose of employment with the public authority—whether or not the conduct occurred in the course of the employee’s employment, or
 - 35 (ii) if the employee is not required to hold a working with children check clearance for the purpose of employment with the public authority—unless the conviction relates to conduct that occurred outside the course of the employee’s employment with the public authority.

(And includes convictions in respect of conduct occurring before the commencement of the CG Act.)

Sexual misconduct means conduct with, towards or in the presence of a child that—

- 40 (a) is sexual in nature, but
- (b) is not a sexual offence.

Examples of sexual misconduct—

- 1 descriptions of sexual acts without a legitimate reason to provide the descriptions
- 2 sexual comments, conversations or communications
- 45 3 comments to a child that express a desire to act in a sexual manner towards the child or another child.

Sexual offence means an offence of a sexual nature under a law of the State, another State, a Territory, or the Commonwealth, committed against, with or in the presence of a child.

Examples of sexual offences—

- 1 sexual touching of a child
- 50 2 a child grooming offence
- 3 production, dissemination or possession of child abuse material.

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

(4) The Diocesan Secretary is authorised to update the notes in this Ordinance to maintain their currency.

2. Delegation

5 (1) The Archbishop may delegate any of the functions of the Head under Part 4 of the CG Act to any person or body and may revoke such delegations at any time by notice in writing to the person or body.

(2) If the Archbishop makes a delegation under subclause (1), references to the Archbishop in this Ordinance are taken to be references to the person or body in respect to the delegated functions.

10 **Note:** Section 65 of the CG Act permits the Head to delegate any functions under Part 4 of the CG Act to any Employees of the Diocese. It is expected that the Archbishop will delegate his functions to the persons, and bodies comprised of persons, that perform requisite functions under the *Ministry Standards Ordinance 2017*.

3. Determinations for the purposes of the CG Act

(1) For the purposes of the CG Act –

- 15 (a) the Diocese is a religious body,
(b) the Diocese does not include schools or organisations that are constituted by or pursuant to ordinance, unless declared to form part of the Diocese by the Standing Committee by resolution for the purposes of this subclause, and
(c) the Archbishop is the Head of the Diocese.

20 (2) For the purposes of the CG Act and the definition of ‘Employee’ in the CG Act, a person is required to hold a Working with Children Check clearance by the Diocese for the purpose of engagement in the Diocese if the person is required to hold a unconditional Working with Children Check under the *Safe Ministry to Children Ordinance 2020*.

5. Reports to the Archbishop

25 (1) A WWCC Employee who becomes aware, knows or has reason to believe that another WWCC Employee has a reportable conviction or has engaged in or is alleged to have engaged in reportable conduct, must as soon as possible report to the Archbishop –

- 30 (a) the name or a description of the reportable person,
(b) details of the alleged reportable conviction or reportable conduct,
(c) the date of birth and working with children number (if any) of the WWCC Employee the subject of the report,
(d) the grounds for knowing or believing that the reportable person has a reportable conviction or has engaged in in the conduct,
(e) whether the conduct has already been reported to any authority, and
35 (f) whether a risk assessment has been undertaken, the outcome of that assessment and any risk management action that has been taken.

(2) A person making a report under subclause (1) must provide such additional information and reasonable assistance to the Archbishop as he may request to enable the conduct to be investigated and reported to the police, the Children’s Guardian or other authority in accordance with the law.

40 (3) Any other person may also make a report to the Archbishop in respect to a WWCC Employee setting out the matters listed in subclause 5(1).

6. Action to be taken by the Archbishop

If the Archbishop receives a report under clause 5 or otherwise becomes aware, in relation to a WWCC Employee, of a reportable allegation or a conviction that is considered to be a reportable conviction, the Archbishop must –

- 45 (a) ensure that a report is made or reports are made to the Children’s Guardian in accordance with the CG Act,
(b) ensure that an initial risk assessment is made based on all known relevant information to ensure that any risk posed by the WWCC Employee the subject of the allegation is managed and revisit that assessment as new information becomes known, including at the end of the
50 investigation,
(c) ensure that arrangements are made for any reportable allegation to be investigated as soon as practicable (subject to any requirement under the CG Act to defer or suspend the investigation),

- (d) determine whether any conviction considered to be a reportable conviction is a reportable conviction,
- (e) make a finding of reportable conduct if he is satisfied that the case against the WWCC Employee the subject of the reportable allegation has been proved against the WWCC Employee on the balance of probabilities after taking into account any mandatory considerations required under the CG Act, and
- (f) otherwise deal with the allegation or conviction in manner that complies with the CG Act and any directions made by the Children's Guardian thereunder.

Note: By section 36 of the CG Act, after an investigation or determination is completed the Archbishop must provide a report (an "Entity Report") to the Children's Guardian, subject to certain exceptions. The Entity Report is to be provided within 30 days after becoming aware of the allegation of reportable conduct or reportable conviction, unless the Archbishop gives –

- (a) an interim report to the Children's Guardian within that period that contains the content required by section 38 of the CG Act,
- (b) the reason for not providing the Entity Report, and
- (c) an estimated time period for the Entity Report.

The Entity Report must include the contents required by section 37 of the CG Act.

7. Investigations and determinations by the Children's Guardian

If the Children's Guardian investigates a reportable allegation or makes a determination about a conviction considered to be a reportable conviction, and provides a copy of its report to the Archbishop, the Archbishop must consider the report and may, or on the request of the Children's Guardian must, notify the Children's Guardian of any action taken or proposed as a result of the recommendations.

8. Disclosure of information

The Archbishop must disclose the following information relating to a reportable allegation or conviction considered to be a reportable conviction if required by the CG Act –

- (a) information about the progress of the investigation,
- (b) information about the findings of the investigation,
- (c) information about action taken in response to the findings,

and must not disclose the information in any other circumstance unless disclosure is permitted by the CG Act or required by law.

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

Chair of Committee

I Certify that this Ordinance was passed by the Synod of the Diocese of Sydney on 2021.

Secretary of Synod

I Assent to this Ordinance.

Archbishop of Sydney

/ /2021