

Discipline Ordinance 2006 Amendment Ordinance 2013

No 44, 2013

Long Title

An Ordinance to amend the functions of the Professional Standards Committee and for related purposes.

The Synod of the Diocese of Sydney Ordains as follows.

1. Name

This Ordinance is the Discipline Ordinance 2006 Amendment Ordinance 2013.

2. Amendments in relation to the functions of the Director and the Professional Standards Committee

The Discipline Ordinance 2006 is amended as follows –

- (a) add the words “or church authority” to the end of the definition of “prohibition order” in clause 2, and
- (b) in clause 4 –
 - (i) delete the full stop at the end of the clause and insert instead the matter “, or”, and
 - (ii) add a new paragraph (e) as follows –

“(e) an offence under clause 36(4A) of this Ordinance.”, and
- (c) in clause 6 add a new paragraph (c) as follows –

“(c) an offence under clause 36(4A) of this Ordinance.”, and
- (d) delete the words “and directions” in the heading of section 34, and
- (e) in clause 34(1) (with consequential renumbering of the paragraphs) –
 - (i) substitute paragraph (a) with the following –

“(a) that the person agree to participate in conciliation, if arrangements for the conciliation of the complaint have not previously been made,” and
 - (ii) delete paragraphs (d) and (g), and
 - (iii) delete the renumbered paragraph (f) and insert instead the following –

“(f) that the person undertake to the Director, in such terms as are specified by the PSC, any one or more of the following –

 - (i) that he or she will resign from any specified position or office in the Diocese or any specified employment by a church body or church authority,
 - (ii) that he or she will not accept nomination for or appointment to any specified position or office in the Diocese or any specified employment by a church body or church authority,
 - (iii) that he or she will not exercise any specified function or will meet any specified condition or restriction, in relation to any office or position in the Diocese, or in relation to employment by any church body or church authority,”, and
 - (iv) insert after the word “person” in the renumbered subparagraph (i)(ii) the following –

“or the removal of the person from a specified position or office”, and
- (f) in clause 35(1) delete the words “and the Archbishop” and insert instead the following –

“, the Archbishop and a relevant church authority”, and
- (g) in clause 35(1A) substitute the matter “34(1)(i) or (j)” with “34(1)(h) or (i)”, and
- (h) in clause 35(2) –
 - (i) insert after the second occurrence of the word “made” the following –

“ –

(a)”, and

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- (ii) delete the matter “.” at the end of the clause and insert instead the following –
 - “, and
 - (b) considers there are good reasons why the recommendation cannot be accepted within 14 days, the person may request that the Director determine a longer period in which the recommendation may be accepted under clause 36(1A).”, and
- (i) delete clause 36(1) and insert instead the following –
 - “(1) If the person against whom the complaint is made, by notice in writing to the Director –
 - (a) accepts the recommendation of the PSC within 14 days after the date of the notice of the recommendation, and
 - (b) complies with any recommendation under clauses 34(1)(a) to (g) to the satisfaction of the Director, and continues to do so within or throughout any period that the notice issued under clause 35(1) states that the action required by the recommendation is to be undertaken,

no further action is to be taken against the person under this Ordinance in relation to the complaint, except as provided by this clause.
- (j) insert a new clause 36(1A) after clause 36(1) as follows –
 - “(1A) The Director may, in writing, determine a period longer than 14 days within which a recommendation under subclause (1) may be accepted if the Director considers there are good reasons why the recommendation cannot be accepted within 14 days. If the Director determines a longer period, he or she must, as soon as reasonably practicable after making the determination, inform the PSC of the determination together with the reasons for the determination.”, and
- (k) insert the following matter before the first hyphen in clause 36(3) –
 - “, including within or throughout any period that the notice issued under clause 35(1) states that the action required by the recommendation is to be undertaken”, and
- (l) insert after the second occurrence of the word “recommendation” in clause 36(4) the matter “or such longer period as the Director may determine under subclause (1A)”, and
- (m) insert a new clause 36(4A) as follows –
 - “(4A) A person who gives an undertaking to the Director in or substantially in the terms of a recommendation made under clause 34(1)(f) and fails to honour that undertaking commits an offence.”, and
- (n) insert a new paragraph (c) in clause 37A(1) (with relettering of existing paragraph (c)) as follows –
 - “(c) that the person be removed from a specified position or office,” and
- (o) insert a new paragraph (c) in clause 66 (with relettering of existing paragraph (c)) as follows –
 - “(c) that the person be removed from a specified position or office.”.

3. Other amendments

The Discipline Ordinance 2006 is amended as follows –

- (a) delete paragraph (a) of the definition of “serious offence” in clause 2 and insert instead the following –
 - “(a) a disqualifying offence listed in Schedule 2 of the *Child Protection (Working with Children) Act 2012*”, and
- (b) delete the matter “clause 12 of the” in clause 4(c) and insert instead “section 12 of the Schedule to the”, and
- (c) delete the matter “*clause 12 of the*” in paragraph (3) of the Notes following clause 4 and insert instead “*section 12 of the Schedule to the*”, and
- (d) delete the words “under clause 32” in clauses 16(1) and (2), and

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- (e) insert a new clause 33(2) as follows (and re-number the existing matter in clause 33 as subclause (1)) –
- “(2) If the complaint alleges 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, and the PSC considers that it is unable to make a finding on the material before it that the person has or has not engaged in any or all of such conduct the subject of the complaint, the PSC must recommend –
- (i) if the person is subject to the jurisdiction of the Diocesan Tribunal, that the Archbishop appoint a person to promote a charge against the person before the Diocesan Tribunal, or that the complaint be referred to a body in another diocese with equivalent jurisdiction, or
 - (ii) if the person is subject to the jurisdiction of the Disciplinary Tribunal, that the Archbishop appoint a person to promote a charge against the person before the Disciplinary Tribunal, or that the complaint be referred to a body in another diocese with equivalent jurisdiction.”, and
- (f) insert a new clause 36(1B) as follows –
- “(1B) If the complaint alleges 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 and –
- (a) the person against whom the complaint is made –
 - (i) admits the complaint or the substance of the complaint, or
 - (ii) accepts the recommendation or recommendations of the PSC made under clause 34(1)(a) to (g), or
 - (b) the PSC recommends that no further action be taken with respect to the complaint under clause 34(4)(d),
- and the PSC is satisfied that the person has engaged in any or all of the conduct the subject of the complaint, then the PSC must make a finding that the person engaged in that conduct.”
- (g) delete note (1) under clause 34 and insert the following as a new note at the end of clause 36 –
- “Note: Section 35(1) of the Child Protection (Working With Children) Act 2012 imposes a duty on a reporting-body (which includes the Anglican Church in New South Wales, including organisations of dioceses) to notify the Children’s Guardian of the name and other identifying particulars of any child-related worker against whom the reporting body has made a finding that the worker has engaged in 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.”, and*
- (h) delete paragraph (c) in clause 42(1) and reletter the existing paragraphs, and
- (i) in clause 65 –
- (a) delete subclause (1) and insert instead the following –

“(1) In dealing with a charge which contains any allegation of 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, a Tribunal must before making any other determination or recommendation it is empowered to make, make a finding as to whether the person engaged in any or all of the conduct the subject of each such allegation.”
 - (b) delete the matter in note (1) and insert instead –

“(1) Section 35(1) of the Child Protection (Working With Children) Act 2012 imposes a duty on a reporting-body (which includes the Anglican Church in New South Wales, including organisations of dioceses) to notify the Children’s Guardian of the name and other identifying particulars of any child-related worker against whom the reporting body has made a finding that the worker has engaged in sexual misconduct

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committed against, with or in the presence of a child, including grooming of a child, or any serious physical assault of a child.”, and

- (j) in clause 87 –
 - (i) delete the matter “– prohibited persons” in the heading,
 - (ii) delete the matter “is a prohibited person within the meaning of the *Child Protection (Prohibited Employment) Act 1998*” and insert instead the following –

“has been convicted of a disqualifying offence listed in Schedule 2 of the *Child Protection (Working with Children) Act 2012*”, and
- (k) delete the Note following clause 87 and insert instead the following –

“*Disqualifying offences in Schedule 2 of the Child Protection (Working with Children) Act 2012 include the murder or manslaughter of a child, intentional wounding or committing grievous bodily harm to a child, abandonment of a child, serious sex offences, incest, bestiality and offences related to child pornography/child abuse material. In general, these are sex offences or offences involving children which are punishable by imprisonment of 12 months or more.*”, and
- (l) delete clause 89 and insert instead the following –

“If the Archbishop refuses to make a declaration under this Chapter in respect of the conduct of a person, the person is not entitled for 5 years to apply again for a declaration in respect of that conduct.”

4. Transitional

(1) The amendments made by this Ordinance apply to complaints made after the date of assent to this Ordinance and to complaints made prior to such date of assent which have not been finally dealt with under Part 2 of the *Discipline Ordinance 2006*.

(2) The amendments in clauses 3(e) and (f) will remain in force until the end of the 1st ordinary session of the 50th Synod.

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

K SOWADA
Deputy Chairman of Committees

We Certify that this Ordinance was passed by the Synod of the Diocese of Sydney on 15 October 2013.

CJ MORONEY
R WICKS
Secretaries of Synod

I Assent to this Ordinance.

GN DAVIES
Archbishop of Sydney
17/10/2013