

General Synod – National Register Canon 2007 Adopting Ordinance 2008

Explanatory Statement

Introduction

1. The *National Register Canon 2007* provides for a canon to replace the National Register Canon 2004 (the “2004 Canon”). The Standing Committee declared that the 2004 Canon affected the order and good government of the Church in a diocese. The matter was referred to the Appellate Tribunal which found that the 2004 Canon did not affect order and good government. In any event the 2004 Canon had a significant number of shortcomings which led to the present canon being passed at the 2007 session of the General Synod.

2. The Standing Committee considers that the present canon also affects the order and good government of the Anglican Church of Australia in a diocese and that the canon should therefore be adopted by the Synod before it has effect in this Diocese.

Comments on the canon

3. The canon establishes a National Register which contains information about members of the clergy and lay persons. This information includes, among other things, notifiable complaints made against such persons. A notifiable complaint is a complaint of sexual misconduct or child abuse which has been communicated to the member of clergy or lay person concerned. Sexual misconduct is not defined in the canon however under the standards established by *Faithfulness in Service*, it would be expected to include sexual misconduct involving unchastity.

4. Information about a notifiable complaint is removed from the Register if the relevant Director of Professional Standards notifies the General Secretary that –

- (a) the notifiable complaint has been withdrawn or has been determined to be false, vexatious or misconceived, or
- (b) a body competent to do so has found that it is more likely than not that the subject matter of the complaint did not occur.

5. Access to and disclosure of information on the Register is regulated by a protocol made under section 11 of the canon. A copy of the protocol is included as an attachment to this statement.

6. In the context of a diocese, only the diocesan bishop (or his delegate) and the Director of Professional Standards of the diocese may access and disclose information on the Register. Access and disclosure can only be made in certain circumstances where required by the procedures of a church authority. Because access and

disclosure of information must accord with the requirements of a church authority, it is competent for the synod of a diocese to regulate the access and disclosure requirement of all church authorities in the diocese by ordinance.

Comments on the 2008 Ordinance

7. In order to regulate access and disclosure of information on the Register pending consideration of the canon by the Synod, the Standing Committee passed the National Register (Access and Disclosure) Ordinance 2008 (the "2008 Ordinance"). The 2008 Ordinance restricts access and disclosure in the Diocese to the following circumstances –

- (a) where the Archbishop proposes ordaining or issuing a licence to a member of clergy or a lay person (or where a person applies for or is invited to apply for ordination or a licence), and
- (b) where the Archbishop proposes to appoint a person to a position within the Diocese (or a person applies for or is invited to apply for appointment to a position within the Diocese by the Archbishop).

8. The 2008 Ordinance also made a number of amendments to the Discipline Ordinance 2006 to facilitate the inclusion of information from the Diocese on the Register and the removal of such information from the Register.

9. The 2008 Ordinance ceases to have effect on the last day of the 2008 Synod session in order to allow the Synod to consider its adoption of the canon and whether arrangements under the 2008 Ordinance for access and disclosure in this Diocese should be continued.

Comments on the bill

10. The bill by which the canon is proposed to be adopted serves three main purposes. The first is to provide for the adoption of the canon in the terms set out in clause 5 of the bill. The second is to continue the approach taken in the 2008 Ordinance for access and disclosure of information on the Register in this Diocese (clauses 3 and 4). The third is to preserve amendments made by the 2008 Ordinance to the Discipline Ordinance 2006 to facilitate the inclusion of information from the Diocese on the Register and the removal of such information from the Register (clause 6).

Recommendation

11. The Standing Committee recommends that Synod pass the bill as an ordinance.

For and on behalf of the Standing Committee.

ROBERT WICKS
Diocesan Secretary

29 August 2008

Attachment

Protocol for access to and disclosure of information in the National Register

Part 1 General

Title

1 The Protocol may be cited as the "Protocol for access to and disclosure of Information in the National Register 2007".

Part 2 Access by authorised persons

Acknowledgment and agreement of authorised persons

2 The General Secretary must not allow an authorised person other than himself or herself to have any access to Information in the National Register unless he or she has received a signed document in the form of the acknowledgement and agreement at the end of this Schedule from the authorised person. The General Secretary must sign this form of acknowledgement and agreement before undertaking any responsibility under this Canon. The acknowledgment and agreement will remain in force unless withdrawn or the signatory ceases to be an authorised person.

Register of authorised persons

3 The General Secretary must maintain a register of the name, contact details, and the period of access to the National Register, of each authorised person.

Record of reason for access

4 Each time an authorised person has access to Information in the National Register relating to a member of the clergy or lay person (other than the General Secretary, or any person within the General Synod Office whose duties include assisting the General Secretary in maintaining the National Register), he or she must declare to the General Secretary the reason for the access, and the Church authority to which the Information will be disclosed.

Log of access by authorised persons

5 The General Secretary must maintain a log of each access recording the name of the authorised person and the member of the clergy or lay person, the details on the declaration relating to the access, and the date of access.

Access by and disclosure to third parties under compulsion of law

6 Subject to this Protocol, an authorised person may only give access to, and disclose, Information in the National Register relating to a member of the clergy or lay person to a person if compelled by law to do so.

Part 3 Access and disclosure by a Diocesan Representative

Ordination, the issue of a licence or appointment to a position within the diocese

7 Where a Church authority proposes to ordain, or issue a licence to, or to appoint to a position within the diocese, a member of the clergy or lay person, the Diocesan Representative, where required to by the procedures of the Church authority, is authorised to have access to any Information in the National Register relating to the member of the clergy or lay person and disclose whether there is any such, and if so what, Information to the Church authority.

Application for ordination, the issue of a licence or appointment to a position within the diocese

8 Where a member of the clergy or lay person applies for ordination, or the issue of a licence, or appointment to a position within the diocese, the Diocesan Representative, where required to by the procedures of the Church authority, is authorised to have access to any Information in the National Register relating to the member of the clergy or lay person and disclose whether there is any such, and if so what, Information to the Church authority.

Invitation to apply for ordination, the issue of a licence or appointment to a position within the diocese

9 Where a Church authority invites a member of the clergy or lay person to apply for ordination, or the issue of a licence, or appointment to a position within the diocese, and the member of the clergy or lay person expresses interest in making an application, the Diocesan Representative, where required to by the procedures of the Church authority, is authorised to have access to any Information in the National Register relating to the member of the clergy or lay person and disclose whether there is any such, and if so what, Information to the Church authority.

Part 4 Access and disclosure by the Defence Force Representative

10 The Defence Force Representative, where required to by the Primate or the Bishop to the Defence Force, is authorised to have access to and disclose any Information in the National Register relating to a member of the clergy or lay person in the same circumstances as a Diocesan Representative.

Part 5 Access and disclosure by a Director of Professional Standards

Abuse and allegations of abuse

11 Where a Director of Professional Standards receives information relating to sexual misconduct or child abuse or alleged sexual misconduct or child abuse by a member of the clergy or a lay

person, he or she is authorised to have access to any Information in the National Register relating to the member of the clergy or lay person. The Director of Professional Standards is authorised to disclose whether there is any such, and if so what, Information to an Investigator, Determiner or other applicable Church authority.

Appointment of persons to professional standards roles

12 Where a Church authority proposes to appoint a member of the clergy or lay person to or in a professional standards role, and the member of the clergy or lay person has expressed interest in accepting the appointment, the Director of Professional Standards, where required by the relevant procedures for the appointment of persons to professional standards roles, is authorised to have access to any Information in the National Register relating to the member of the clergy or lay person. The Director of Professional Standards is authorised to disclose whether there is any such, and if so what, Information to the person expressing interest in the appointment, and the Church authority.

Election of bishop

13 Where a member of the clergy accepts nomination, or expresses interest in accepting nomination, for appointment as a bishop, the Director of Professional Standards, where required to by the procedures of the diocese for the election of a bishop, is authorised to have access to any Information in the National Register relating to the member of the clergy. The Director of Professional Standards is authorised to disclose whether there is any such, and if so what, Information to each member of the clergy accepting nomination or expressing interest in accepting nomination, and the Church authority or nomination committee.

Election of persons by a Church authority

14 Where a Church authority holds an election for which members of the clergy or lay persons are candidates, the Director of Professional Standards, where required to by the procedures of the diocese for the conduct of elections, is authorised to have access to any Information in the National Register relating to the candidates. The Director of Professional Standards is authorised to disclose whether there is any such, and if so what, Information to the candidates, and the Church authority.

Consecration of bishop

- 15 Where a person in priest's orders is to be consecrated bishop –
- (a) the Director of Professional Standards of the diocese for or in respect of which the consecration is to take place; or
 - (b) the Director of Episcopal Standards in any other case;

is authorised to have access to any Information in the National Register relating to the person. The Director of Professional Standards

is authorised to disclose whether there is any such, and if so what, Information to the person to be consecrated and the Metropolitan, Primate or other bishop as the case requires.

Disclosure to third parties where there is consent

16 A Director of Professional Standards is authorised to have access to any Information in the National Register relating to a member of the clergy or lay person and disclose in writing whether there is any such, and if so what, Information to a third party, where he or she has received the consent in writing of the member of the clergy or lay person. The Director of Professional Standards must take reasonable steps to check the postal or electronic address of the third party before sending a letter containing the disclosure to the third party at that address.

Disclosure to third parties where necessary to protect persons from the risk of abuse

17 A Director of Professional Standards is authorised to have access to any Information in the National Register relating to a member of the clergy or lay person and disclose that Information to a third party, where he or she reasonably believes that disclosure is necessary to protect the third party or any other person from the risk of abuse by the member of the clergy or lay person.

**Part 6 Access and disclosure by the
General Secretary**

Election of the Primate

18 When an election is held for the Primate, each of the General Secretary and the Director of Episcopal Standards, where required by the Primate Canon 1985, is authorised to have access to any Information in the National Register relating to the candidates and disclose whether there is any such, and if so what, Information to the candidates, and the Board of Electors.

Election and appointment of persons by the General Synod

19 Where the General Synod holds an election for which members of the clergy or lay persons are candidates, or proposes to appoint a member of the clergy or lay person to a position and the member of the clergy or lay person expresses interest in the appointment, the General Secretary, where required to by the procedures of the General Synod for the conduct of elections and making appointments, is authorised to have access to any Information in the National Register relating to the candidates or the member of the clergy or lay person and disclose whether there is any such, and if so what, Information to the candidates or persons expressing interest in the appointment, and the General Synod.

Election and appointment of persons by the Standing Committee

20 Where the Standing Committee holds an election for which members of the clergy or lay persons are candidates, or proposes to appoint a member of the clergy or lay person to a position and the member of the clergy or lay person expresses interest in the appointment, the General Secretary, where required to by the procedures of the Standing Committee for the conduct of elections and making appointments, is authorised to have access to any Information in the National Register relating to the candidates or the member of the clergy or lay person and disclose whether there is any such, and if so what, Information to the candidates or persons expressing interest in the appointment, and the Standing Committee.

Certificate as to Information in the National Register

21 The General Secretary will provide to a member of the clergy or lay person, at his or her request, a certificate stating whether there is any, and if so what, Information in the National Register relating to the member of the clergy or lay person.

Part 7 Access by staff of the General Synod Office

22 Any person within the General Synod Office whose duties include assisting the General Secretary in maintaining the National Register is authorised to have access to any Information in the National Register for the purpose of providing assistance to another authorised person and carrying out any maintenance or enhancement of the National Register.

Acknowledgment and agreement

I (insert name) , the (insert position and diocese if applicable) acknowledge that I have read the protocols approved under the National Register Canon 2007 –

- (a) Protocol for provision of Information for inclusion in the National Register 2007;
- (b) Protocol for access to and disclosure of Information in the National Register 2007;
- (c) Protocol to ascertain the details of any Information and access to that Information in the National Register 2007;
- (d) Protocol for amendment of Information in the National Register 2007.

I agree to abide by these protocols, and not to disclose my password to any other person.

(Date)

(Signature).