

# Ministry Standards Ordinance 2017 Amendment Ordinance 2018

## Explanatory Report

### Key Points

The Bill will amend the *Ministry Standards Ordinance 2017* to –

- replace the term “reportable conduct” with “serious child-related conduct”;
- amend the definition of “misconduct” in clause 6 by –
  - including further material from *Faithfulness in Service* in the definitions of “emotional abuse” and “neglect” to give examples of the conduct concerned;
  - including failing to comply with mandatory reporting obligations under the law with respect to child abuse within the definition of “process failure”;
  - inserting a new definition of “safe ministry training failure” to deal with a failure to satisfactorily complete safe ministry training without a reasonable excuse;
  - inserting the victimisation of a complainant or witness in the list of examples,
- insert a new part to provide an expedited process for issuing prohibition orders in relation to church workers who have been convicted of serious criminal offences;
- give Adjudicators a discretion as to whether to provide their proposed recommendations to the Archbishop, relevant Church authority and the respondent for a response instead of this process being mandatory; and
- allow the Archbishop to also release information in relation to complaints when he is not the relevant Church authority and to require prior consultation with the Director of Professional Standards in relation to any proposal release of information.

### Purpose of the bill

1. The purpose of the bill is to amend the *Ministry Standards Ordinance 2017*.

### Recommendations

2. Synod receive this report.
3. Synod pass the bill as an ordinance of the Synod.
4. Synod request the Standing Committee to appoint a committee to further consider and make recommendation in relation to the matters set out in paragraphs 48-53 of the report.

### Background

5. At its session in 2017, the Synod passed a bill for the *Ministry Standards Ordinance 2017* (the “MSO”) to replace the *Discipline Ordinance 2006*. It commenced on 1 November 2017.
6. The MSO –
  - (a) provides an administrative process for the resolution of complaints concerning the fitness of church workers to hold an office or position, to remain in Holy Orders, to exercise ministry or perform any duties or functions, whether or not subject to any conditions or restrictions, and
  - (b) has established a Professional Standards Board to be the determining body under the complaints process instead of the Diocesan Tribunal or a Disciplinary Tribunal.
7. In conjunction with passing the MSO in 2017, the Synod requested the Standing Committee to undertake a review of the operation of the MSO prior to the 2018 session of the Synod. The explanatory report for the MSO noted that there are would “inevitably be some matters identified in the next 12 months as the Ministry Standards Bill is put into operation that will require amendments to be made to improve the complaints process”.
8. At its meeting on 23 July 2018, the Standing Committee appointed a Committee (the Committee) to review the Ordinance. The Committee was composed of Mr Michael Easton (Chair), Mr Garth Blake AM SC AO, Mr Lachlan Bryant, the Rev Mark Charleston, Mr Doug Marr, the Rev Tom Hargraves, the Rev Craig Schafer, and the Rev Mamie Long. The Rev Jennie Everist also participated in a meeting of the Committee at the Committee’s invitation, but was not appointed as a member of the Committee.

9. The group that prepared the MSO for Synod in 2017 commenced reviewing the MSO earlier in the year in preparation for the review. The Standing Committee's appointment of the Committee on 23 June 2018 formally convened the group and added some additional members.

**The Professional Standards Unit's experience with the MSO**

10. The Director of Professional Standards reported his view to the Committee that the MSO has worked reasonably well since its commencement. However he identified some difficulties with respect to bullying complaints, particularly against senior clergymen. Bullying complaints were not within the ambit of the *Discipline Ordinance 2006*.

11. The Director advised that the procedure in the Ordinance has been too protracted for matters that have required swift intervention and resolution. This has been particularly problematic when the respondent was the Rector and the complainant(s) were on staff. A properly functioning staff team and the continuation of parish ministry can become seriously compromised in such situations and the impact on the parish, at least in the short term, can be significant.

**Specific matters for consideration that have been referred to the Committee**

*Persistent failure to attend Faithfulness in Service and Safe Ministry Training*

12. Synod Resolution 32/17 provides -

'Synod, noting the Second Interim Report of the Licensing of Incumbents Review Committee –

...

(f) requests the Standing Committee to bring a bill to the next Synod that would constitute as misconduct "unreasonable and persistent failure to attend the triennial Faithfulness in Service training" and "unreasonable and persistent failure to complete the triennial Safe Ministry training."

13. Committee response: The Committee agrees that this amendment is required. The Ordinance will amend clause 6(2)(g) of the MSO to insert a new example of misconduct for a "safe ministry training failure". This will be defined as –

'a failure without a reasonable excuse to satisfactorily complete mandatory training approved by the Safe Ministry Board for the purposes of Chapter 7 of Schedule 1 and Schedule 2 of the *Parish Administration Ordinance 2008*.'

14. Rule 7.1 of Schedules 1 and 2 of the *Parish Administration Ordinance 2008* defines Safe Ministry Training to be "training approved by the Safe Ministry Board". This training must be undertaken every 3 years by ministers and assistant ministers, and by any person who is in a "children's ministry position", which is defined as "a paid or unpaid position to which a person is appointed by or on behalf of the minister or the wardens that primarily involves contact with children".

*Serious pastoral care failures in relation to victims of domestic violence*

15. At its meeting on 13 November 2017, the Standing Committee resolved to note a request from the Domestic Violence Response Taskforce that –

'...the committee further reviewing the *Ministry Standards Ordinance 2017* consider the recommendation in paragraphs 59 and 60 of the Report [of the Taskforce].'

16. Paragraphs 59 and 60 of the report of the Taskforce are as follows –

'59. The Task Force recommends those reviewing the Church Discipline Ordinance to consider measures to ensure that a clergy person or church worker can be appropriately required to receive guidance and specialised help and/or disciplined in cases of domestic abuse, which do not constitute sexual abuse or serious criminal behaviour already covered by the ordinance.

60. The Task Force recommends those reviewing the Church Discipline Ordinance consider measures to ensure that a clergy person or church worker can be required to receive guidance and specialised help in cases of serious failure to provide appropriate pastoral care to a victim of domestic violence. By "serious failure", we refer to provision of pastoral care in a manner that puts the safety of a victim or their family at risk and demonstrates a wilful disregard of the Synod's policy and guidelines in this area.'

17. The explanatory report to the 2017 session of Synod for the MSO also stated –

‘28. Finally, the Committee is aware of the work that has been undertaken by the Domestic Violence Response Taskforce at the request of the Synod and is also aware of Synod resolution 24/16, by which Synod requested the Committee:

“...to consider changes to the necessary ordinances which would allow victims of domestic abuse, who have brought the abuse to the attention of church-workers who have their pastoral oversight and who feel that they have received negligent, callous or otherwise improper advice or treatment by those with pastoral oversight, to have complaints referred to the Professional Standards Unit”.

29. The Committee considers that if the Guidelines prepared by the Taskforce are adopted by the Synod, a period of time should be allowed for church workers to become familiar with these Guidelines before inserting such a ground of misconduct. The Committee has considered what may be appropriate in this regard and suggests a ground of misconduct in or to the effect of the following be inserted in the Ordinance by Synod in 2018 –

“**inappropriate pastoral care to a victim of domestic abuse**, which means providing pastoral care in a manner that puts the safety of a victim or their family at risk and demonstrates wilful or reckless disregard with the Synod’s Responding Well to Domestic Abuse: Policy and Good Practice Guidelines”.’

18. Committee response: Having considered this proposal in greater depth, the Committee does not support the inclusion of inappropriate pastoral care to a victim of domestic violence as a specific example of misconduct in the MSO. There are four reasons.

19. Firstly, the Committee does not consider that the Synod’s *Responding Well to Domestic Abuse: Policy and Good Practice Guidelines* are sufficiently precise to be enforceable in the same way that a code might be enforceable. The responsibilities under the guidelines could be avoided by a church worker refusing to read or consider them. Since they are guidelines and not precise enough to be standards or rules, it is problematic to ensure compliance by reference to the guidelines per se.

20. Secondly, the Committee is hesitant about creating a ground of misconduct which may go to the competence of a person in providing pastoral care. These matters are better addressed through training and support, especially given that the Guidelines are new. The Committee understands that Anglicare is providing training to clergy in this area and that Anglicare has engaged a Domestic Violence adviser who can be contracted by clergy. The Committee supports these initiatives.

21. Thirdly, the Committee considered that an unintended outcome could be that clergy are discouraged from providing pastoral care to victims of domestic violence at all and that victims of domestic violence are simply referred to Anglicare.

22. Finally, pastoral care failures can already be dealt with under the Ordinance and it is not necessary to insert a specific example of misconduct to ensure that egregious matters can be addressed through the complaints process. The list of misconduct in clause 6 of the MSO is inclusive, a person can make a complaint about any conduct by a church worker which, if established, would call into question their fitness to hold office or undertake ministry.

*Assistance for a spouse where a member of clergy is accused of domestic violence*

23. The Standing Committee requested the Committee to make recommendations on whether the MSO can provide a means for the allocation of a portion of a stipend and living arrangements for a spouse where a member of clergy is accused of domestic violence.

24. If a member of clergy is accused of domestic violence and there is a separation, often the spouse is left in a vulnerable position in terms of their housing and finances. It is the member of clergy who is entitled to live in the house and receive a stipend as part of their ecclesiastical office.

25. The Committee considers that while the concern is well-placed, it would be unwise to provide for assistance for clergy spouses within the framework of the MSO. To do so would create a situation where a spouse needs to make a complaint in order to obtain assistance. The complaints process may not be helpful for the family at the time. The Committee considers that the assistance should be considered through other means.

*Reimbursement of stipend and benefits paid during a period of suspension (clause 20(b)(iii), MSO)*

26. At its meeting on 26 March 2018, the Standing Committee resolved to –

'...refer to the Committee reviewing the Ministry Standards Ordinance 2017, the possibility of amending the Ordinance to –

- (a) require the parish to which the person against whom the complaint is made is licensed or employed, to continue to pay whatever stipend, salary, allowances and other benefits that he or she would otherwise have received, and
- (b) limit the amount to be "reimbursed from funds under the control of the Synod" to the actual additional costs (for a locum or other arrangement) incurred by the parish to which the church worker was licensed or employed.'

27. Committee response: The Committee supports this proposal. At present if a person is made subject to a suspension order –

'the person against whom the complaint is made is entitled to whatever stipend, salary, allowances and other benefits that he or she would otherwise have received and which are to be met or reimbursed from funds under the control of the Synod" (clause 20(b)(iii)).'

28. There may be circumstances where the parish does not engage a locum or additional staff to cover the duties of the suspended person. In this scenario the parish would receive a financial benefit from the receipt of funds from the Synod since there would be no corresponding additional expense incurred by the parish.

29. By application of the same principle, the Committee considers that monies received by the suspended person for ordinary stipend, salary, allowances and other benefits from the parish should exclude payments that are provided on account of expenses incurred in undertaking ministry activities that they are not incurring while on suspension.

30. The Ordinance will replace the existing clause 20(b)(iii) with the following paragraphs -

- '(iii) the person against whom the complaint is made is entitled to continue to receive their ordinary stipend, salary, allowances and other benefits in connection with the position, except to the extent that these are provided on account of expenses incurred in undertaking their duties or functions ; and
- (iv) in the case of a respondent who is licensed or authorised for ministry in a parish – the parish concerned is entitled to reimbursement from funds under the control of the Synod for the reasonable additional costs incurred by the parish for the engagement of any temporary personnel to undertake the duties of the respondent during the period of suspension;'

#### **Other amendments proposed by the Committee**

*"Reportable Conduct" now "serious child-related conduct"*

31. The MSO uses a definition of "Reportable Conduct", which means -

'...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:

- (a) when engaged in child-related work in the Diocese; or
- (b) who –
  - (i) is in child-related work in the Diocese at the time a complaint concerning their conduct is made, or
  - (ii) 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.'

32. The Committee considers that the words "reportable conduct" give the impression that all the conduct in this category is reportable. In fact only a subset of the conduct is reportable under the *Child Protection (Working with Children) Act 2012*.

33. The Ordinance will replace the words "Reportable Conduct" with "Serious Child-related Conduct", which better reflects the meaning of the definition. The definition itself is unchanged.

*Expanding the definition of process failure (clause 6(2)(f))*

34. The Ordinance will expand the definition of process failure in clause 6(2)(f) to include a failure to comply with a law that requires knowledge of child abuse to be reported to the police or another authority.

The new paragraph will use the same wording as the *Offences Ordinance 1962* in respect to mandatory reporting. The MSO includes the offences in the *Offences Ordinance 1962* within the definition of “misconduct” (clause 3(2)(a)). However these only apply to clergy. The effect of the amendment will be to expand the requirement to lay people who have reporting obligations.

*Refining the definitions of “emotional abuse” and “neglect”*

35. The Ordinance proposes to amend the definition for emotional abuse (clause 6(2)(b)(iii)) and the definition for neglect (clause 6(2)(b)(v)) to more specifically reflect the wording of the *Faithfulness in Service* code. The changes pick up the examples listed in the definitions in *Faithfulness in Service* and give further guidance on the types of conduct that are relevant.

36. The Committee also considers that the substantive part of the definition for “emotional abuse” should be amended to include words in the definition in the *National Register Canon 2007* rather than *Faithfulness in Service*. Presently “emotional abuse” is defined in the MSO to mean “acts or omissions that have caused, or could cause emotional harm or lead to serious behavioural or cognitive disorders”. This means that acts or omissions that only cause emotional harm would constitute “emotional abuse”. The *National Register Canon 2007* uses words “significant harm to the wellbeing or development of another person”. This is a clearer and more appropriate test. The Ordinance will amend clause 6(2)(b)(iii) accordingly.

*Victimisation of complainants or witnesses (clause 6(2)(i))*

37. The Ordinance will insert a new example of misconduct in clause 6(2)(i) to address the victimisation of complainants and witnesses. The proposed ground is: “threatening or taking, or attempting to take, action against a person because they have made, or have been involved in, a complaint under this Ordinance”.

*Prohibition orders for church workers convicted of serious criminal offences*

38. The Committee proposes the introduction of a new “Part 3E – Complaints Involving Serious Criminal Convictions” (and renumbering the existing Part 3E and remaining Parts). The purpose is to create an expedited and efficient process for issuing prohibition orders in respect to church workers who have been convicted of a “disqualifying offence”, which is defined as an offence listed in Schedule 2 of the *Child Protection (Working with Children) Act 2012*.

39. These offences 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.

40. Presently, a prohibition order can only be issued in respect of a person with such a conviction by the appointment of an Adjudicator (in the case of an unpaid lay person) or the PSC making recommendations with the person’s consent, or a referral being made to the Professional Standards Board (if the consent is not given). These processes can be slow to administer and there is no real question to be tried by the decision-maker since it is self-evident that such a person is not fit for office or ministry.

41. Part 3E will enable the Director of Professional Standards to refer a complaint directly to the PSC if the Director is in possession of the reasons for judgment or other record from a court, a police history check, or a notification from a statutory authority, which indicates that the respondent has been convicted of a disqualifying offence. The Director must first put the respondent on notice, invite a response and provide any response from the respondent to the PSC. If the PSC is satisfied that the respondent has been convicted of a disqualifying offence, the PSC may recommend to the Archbishop that a prohibition order be made against the respondent.

42. The process in Part 3E will supplement the existing complaints process in respect to a person with a disqualifying conviction. The Ordinance will amend clause 16(2) to provide an exclusion for a complaint that has only been dealt with under Part 3E. This means that the Director can deal with the complaint in the usual way under the MSO notwithstanding that the person is subject to a prohibition order that has been issued pursuant to a recommendation made under Part 3E. This might be relevant in the case of clergy, where there is a need to make further recommendations for deposition from holy orders.

*Powers of the Adjudicator*

43. Presently the MSO specifies that the Adjudicator has the same powers as the Board (clause 30(3)). The Ordinance will amend the MSO to outline these powers rather than incorporating them by a cross-reference.

44. Presently the MSO requires the Adjudicator to notify the Archbishop, relevant Church authority and the respondent of any proposed recommendations and provide a reasonable opportunity to comment

before finalising their decision (clause 30(2)). The Ordinance will make this discretionary as the opportunity to comment is not appropriate in all circumstances.

*Announcements and sharing information*

45. Clause 103 of the MSO permits a relevant Church authority to “release to any person such material as the Church authority may determine with respect to any information, complaint or finding”. The Committee considers that some safeguards are needed to ensure that appropriate disclosures are made.

46. The first safeguard is to require consultation with the Director. This is to ensure that the Director has the opportunity to provide feedback on any proposed communications or announcements. It is common for parishes to seek input from the Director or the Diocesan Legal Counsel, but presently there is no requirement that they do so.

47. The second safeguard is to give the Archbishop an entitlement to release information if he is not otherwise the relevant Church authority. The Archbishop is not a Church authority under the MSO in relation to unpaid lay church workers. On occasion there has been a need to release information to adequately explain the outcome of a complaint but the relevant Church authority has been unable or unwilling to make the necessary disclosures.

**Items not addressed in this review**

*Gap analysis of diocesan safe ministry measures and the final recommendations of the Royal Commission*

48. The Professional Standards Unit engaged external lawyers to undertake a review of diocesan safe ministry measures, with a view to determining where there were gaps between these measures and the final recommendations of the Royal Commission. The review did not reveal any substantial gaps, but some further work is required. The Committee could not adequately deal with the recommendations in the time available, and a number of the recommendations go beyond the MSO and are outside of its terms of reference.

*Complaints of misconduct within a parish staff team*

49. In view of the feedback from the Director (see paragraphs 10 and 11), the Committee discussed the need for a mechanism to expedite complaints within a parish staff team (particularly bullying). The processes in the MSO are not currently suited to dealing with situations where the complainant(s) and the respondent are on the staff of the same church. The committee need more time to prepare an expedited process that is quick and efficient without compromising procedural fairness or the quality of the decision-making process. The Committee decided this matter was too complex to be dealt with comprehensively before Synod in 2018. The matter should be considered as part of a more specific review of the MSO.

*Bullying and harassment as grounds of misconduct*

50. A minority of members of the Committee argued that notwithstanding the terms of *Faithfulness in Service*, that—

- (a) the definition of “bullying” in clause 6(2) should be amended by deleting “dismissing or minimising someone’s legitimate concerns or needs” and “inappropriately ignoring, or excluding someone from information or activities” from the examples, and
- (b) the definition of “harassment” should be omitted from clause 6(2).

51. The concern expressed by the minority was that such broad language and subjective categories could potentially encourage vexatious and/or trivial complaints, consuming limited PSU resources and potentially causing innocent respondents to experience unnecessary emotional distress, reputational damage and /or unhelpful distractions from ministry.

52. The majority do not agree with the proposed amendments. Clause 16 already contains a mechanism for dismissing vexatious and/or trivial complaints early in the process.

53. The concerns raised could be considered in the context of a further review of the appropriateness of the process in the MSO for dealing with complaints about bullying (or other misconduct) within a parish staff team.

For and on behalf of the Standing Committee

DANIEL GLYNN  
*Diocesan Secretary*

31 August 2018