

Ministry Standards Ordinance 2017 Amendment Ordinance 2019

No 45, 2019

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 2019.

2. Amendments to introduce a conciliation process

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

- (a) insert a new paragraph 14(a) as follows (and consequentially reletter the existing paragraphs) –

“(a) recommend that the parties engage in conciliation under clause 18A,”,

- (b) insert a new paragraph 14(b) as follows –

“(b) refer the matter directly to the PSC and, with the concurrence of the PSC, in the case of a respondent’s first bullying complaint, request that the respondent participate in appropriate training as soon as practicable under clause 18B, and recommend that the parties engage in conciliation;”,

- (c) insert a new clause 18A as follows –

“18A Director may recommend conciliation

(1) At any time after a complaint is made, the Director may recommend to the parties that they engage in conciliation if –

- (a) the Director considers that conciliation may assist the parties, and
(b) the complaint does not allege serious child-related conduct.

(2) In considering whether to make a recommendation under subclause 18A(1), the Director is to consider any power imbalance between the parties.

(3) The Director may recommend a conciliator to the parties and otherwise facilitate the conciliation occurring.

(4) If the parties agree to engage in conciliation on the basis of a recommendation under subclause 18A(1) –

- (a) the Director is not prevented from undertaking any of the other courses of action listed in clause 14 during the period of conciliation,
(b) the mediation is to be undertaken expeditiously,
(c) the attendees for any conferences must be agreed upon by all parties in advance of the conciliation, and
(d) the costs of the conciliator are to be met from funds under the control of the Synod, subject to the Director approving those costs before they are incurred.”, and

- (d) insert a new clause 18B as follows –

“18B Director may request appropriate training

(1) The Director may, with the concurrence of the PSC, request that the respondent participate in appropriate training and recommend that the parties engage in conciliation if –

- (a) the complaint relates primarily to bullying,
(b) it is the first bullying complaint against the respondent that has been received by the Director, and
(c) the complaint does not allege serious child-related conduct.

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(2) The respondent is to undertake such training as soon as practicable and provide suitable evidence to the Director that such training has been completed.

(3) While, in the interests of staff development and reconciliation, this combination of appropriate training and conciliation would ordinarily be considered appropriate in the case of first time complaints, the Director is not prevented from undertaking any of the other courses of action listed in clause 14 during the period of conciliation.

(4) The costs of the appropriate training and any costs for the conciliator are to be met from funds under the control of Synod, subject to the Director approving those costs before they are incurred.”.

3. Amendments to implement recommendations of the Royal Commission into institutional responses to child sexual abuse

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

(a) insert a new clause 12A as follows –

“12A Risk Assessment by Director

(1) If the Director receives a complaint alleging child abuse, the Director must promptly undertake a risk assessment to identify any risks to children.

(2) The risk assessment must include, but is not limited to, consideration of the following –

- (a) any immediate and ongoing risks associated with the complaint, including the safety of the complainant and any children,
- (b) whether preliminary action could and should be taken concerning the respondent including supervision, removal of contact with children or suspension,
- (c) the available expertise to assess the risk and whether expert advice should be obtained,
- (d) the need for cultural and linguistic interpreters to be involved in the complaint process,
- (e) whether it is necessary to report the complaint to an external authority,
- (f) who should be informed about the complaint, and whether there are restrictions on the information they can be given (for example, due to privacy laws and other confidentiality obligations), and
- (g) how to implement the decisions made as a result of the risk assessment.

(3) The Director must review the risk assessment during the complaints process in response to any changes in the risk profile and make modifications where necessary.”, and

(b) insert a new subclause 19(c) as follows –

“(c) the Director must recommend that the respondent is suspended if, after giving the respondent the opportunity to be heard under paragraph (a), the Director is satisfied that –

- (i) the complaint or the substance of the complaint involves allegations of serious child-related conduct,
- (ii) the complaint is not false, vexatious or misconceived, and
- (iii) there is a risk that the respondent may come into contact with children in the course of their functions as a church worker.”, and

(c) insert a new subclause 28(3) as follows (and renumber the existing subclause 28(3) as subclause 28(4)) –

“(3) If the Adjudicator has any actual or perceived conflict of interest in the exercise or performance of their functions under this Ordinance in relation to a complaint, the Adjudicator must disclose this to the Registrar and the Registrar is to appoint another experienced lawyer to be the Adjudicator for the complaint.”, and

(d) substitute subclause 29(3) with the following –

“(3) If the complaint or the substance of the complaint has not been admitted by the respondent, the Adjudicator –

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- (a) must act with fairness and according to equity, good conscience, procedural fairness and the substantial merits of the case without regard to technicalities or legal forms in resolving the complaint,
 - (b) is not bound by the rules of evidence but may inform himself or herself on any matter in such manner as her or she thinks fit,
 - (c) must give written reasons for any findings and recommendations, unless the findings and recommendations are made by consent of the respondent, and
 - (d) must deal with the complaint as expeditiously as possible.”, and
- (e) insert a new subclause 29(4) as follows –
- “(4) The standard of proof for the Adjudicator to establish an allegation is that of reasonable satisfaction on the balance of probabilities.”,
- (f) insert a footnote in respect to clause 29(4) and clause 68 as follows –
- “The standard of proof is to be applied with regard to the principles in *Briginshaw v Briginshaw* [1938] HCA 34.”,
- (g) substitute clause 70 as follows –
- “70. Disqualification where conflict of interest**
- (1) A member of the PSC or the Board must promptly disclose to the other members any actual conflict of interest they have as a member and any circumstances which might reasonably be perceived as a conflict of interest, including the reason(s) why such a conflict of interest might exist.
- (2) Where a member of the PSC or the Board has an actual or perceived conflict of interest in a matter, the member shall be disqualified from participating in the matter.
- (3) The opinion of a majority of the other members of the PSC or Board, as the case may be, shall be conclusive as to whether the member has an actual or perceived conflict of interest in a matter”, and
- (h) insert a new clause 82A as follows –
- “82A. Conflict of Interest**
- If the Director has any actual or perceived conflict of interest in the exercise or performance of any power, authority, duty or function under this Ordinance in relation to a matter, the Director must declare to the Archbishop that he is unable or unwilling to exercise or perform that power, authority, duty or function in relation to the matter.”

4. Other amendments

The *Ministry Standards Ordinance 2017* is further amended by substituting paragraph 21(2)(d) with the following –

- “(d) 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
- (e) 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 person against whom the complaint is made during the period of the order.”

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

K SOWADA
Chair of Committees

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I Certify that this Ordinance was passed by the Synod of the Diocese of Sydney on 16 October 2019.

D GLYNN
Secretary

I Assent to this Ordinance.

G DAVIES
Archbishop of Sydney

24/10/2019