

Ministry Standards Ordinance 2017 Amendment Ordinance 2022

No 34, 2022

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 2022*.

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

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

- (a) insert the material in the Schedule on a separate page after the Diagrammatic Summary of the Complaints Process,
- (b) insert the words “including complainants, respondents and Church bodies” at the end of subclause 2(1)(b),
- (c) substitute the word “timely” for the word “expedient” in subclause 2(1)(d),
- (d) insert the following new definition in clause 4(1) –
“Standing Committee” means the Standing Committee constituted under the *Standing Committee Ordinance of 1897*;
- (e) insert the following words in clause 4(3) before each instance of the word “diagram” –
“Features of the complaint processes, the”,
- (f) substitute the text in subclause 6(2)(i) with the following –
“**victimisation** which means action causing, comprising or involving the following in respect of a person because they, acting in good faith, propose to make, have made or have been involved in, a complaint under this Ordinance –
 - (i) injury, damage or loss,
 - (ii) intimidation or harassment,
 - (iii) discrimination, disadvantage or adverse treatment in relation to employment or appointment to a position,
 - (iv) dismissal from, or prejudice in, employment or appointment to a position,
 - (v) prejudice in the provision of a service,
 - (vi) disciplinary proceedings;”,
- (g) insert following new subclause (2) in clause 9 (and number the existing text in that clause as subclause (1)) –
“(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*.”,
- (h) renumber the existing clause 12 as clause 10 (and consequentially renumber the existing clauses 10 and 11 as clauses 11 and 12 respectively) and insert the following words at the end of the renumbered clause 10 before the full-stop –
“, unless the church worker knows that the conduct has already been reported to the Director”,
- (i) substitute the renumbered clause 12 with the following –
“**12. Early resolution process**
 - (1) Prior to taking a course of action under clause 14, the Director may direct a prospective complainant and a prospective respondent,

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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 accessing the *Diocesan policy for dealing with allegations of unacceptable behaviour*, conciliation, a facilitated discussion or individual counselling.

(2) In deciding whether to give a direction under subclause (1), the Director is to have regard to the following factors –

- (a) the subject-matter of the complaint,
- (b) the likelihood that any matters in conflict could be resolved through that process,
- (c) any imbalance of power between the parties,
- (d) the attitude of the parties to the proposed direction, and
- (e) whether having a support person would assist in the process.

(3) The Director must not give a direction under subclause (1) 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.

(4) The Director may revoke or amend a direction given under subclause 12(1) 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.”

- (j) number the existing text in clause 14 as subclause (2) and insert the following as a new subclause (1) –
 - “(1) The Director must use reasonable endeavours to explain the processes set out in this Ordinance to a complainant”,
- (k) insert a new subclause 14(3) as follows -
 - “(3) The Director must consult the relevant Regional Bishop before taking the course of action in either subclause (2)(b), (d), (h) or (i)”.
- (l) 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(1).”,
- (m) insert a new subclause 16(2)(h) as follows (and consequentially reletter the existing subclauses 16(2)(h) and (i)) –
 - “(h) the complaint was not made, or was made but then withdrawn, as a result of a process undertaken under clause 12; or”,
- (n) delete the word “and” following the semicolon in subclause 19(b)(iii),
- (o) insert the following new paragraphs at the end of subclause 19(b)(iv) before the full-stop –
 - “(v) the likely effect on the complainant or any other person; and
 - (vi) the conduct of the respondent subsequent to the making of the complaint”,
- (p) insert a new subclause 41(k) as follows –
 - “(k) that the respondent consent to the release of material or the making of an announcement in any form and manner specified by the PSC to explain the outcome of the complaint;”,
- (q) reletter the text in clause 41 as subclause (1) and insert a new subclause (2) as

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follows –

- “(2) Any decision of the PSC to make or not to make the recommendation in subclause (1)(k) does not in any way limit the discretion of the PSC, the Archbishop or the relevant Church authority (as the case may be) to release material under clauses 104(2) or 106.”,
- (r) insert a new subclause 83(1)(h) as follows (and consequentially reletter the existing subclauses 83(1)(h) to (m)) -
- “(h) to keep complainants and respondents informed about the progress of the complaint under the Ordinance,”
- (s) insert the following at the end of clause 106 before the full-stop –
- “including notifying the complainant of the outcome of the complaint and making a public announcement in the relevant church.”, and
- (t) number the text in clause 106 as subclause (1),
- (u) insert a new subclause 106(2) as follows –
- “(2) In deciding whether to release material under subclause (1), the Archbishop or the relevant Church authority is to have regard to the following factors –
- (a) the impact of the release of the information on any person,
- (b) the benefit of the release of the information for any person, and
- (c) whether there is a legitimate need for the release of the information, such as to ensure or increase public safety, quell rumour, ensure transparency and accountability or explain the processes and outcomes under the Ordinance”,
- (v) insert a new clause 107 as follows (and consequentially renumber the existing clause 106 and remaining clauses) –

“107. Duty of respondents in the release of information

A respondent must cooperate with and facilitate any instructions from the PSC, the Archbishop or the relevant Church authority concerning the release of any material under clauses 104(2) and 106 to the extent that it is within the respondent’s power and authority to do so.”.

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

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

- (a) in clause 6(2)(h) substitute the matter “*Child Protection (Working with Children) Act 2012 (NSW)*” with the matter “*Children’s Guardian Act 2019 (NSW)*”, and
- (b) substitute 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*.”, and

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- (c) insert the following words at the end of the renumbered clause 11 before the full stop –

“, except in the case of allegations of conduct which, if established, would constitute serious child related conduct”.

Schedule

Features of the Complaints Process

Complainants will often have a choice between making a complaint under the *Ministry Standards Ordinance 2017* (“MSO”) and attempting to resolve their complaint through the *Diocesan policy for dealing with allegations of unacceptable behaviour* (“Policy”). The table below provides a summary of the key features of each process. The table is not exhaustive and is merely explanatory in nature. The detail in the MSO and the Policy should always be relied on in preference to the table.

Key Feature	Ministry Standards Ordinance 2017	Diocesan policy for dealing with allegations of unacceptable behaviour
<i>What is the aim of the process?</i>	To: <ul style="list-style-type: none"> • uphold the standards of conduct expected of church workers in the Diocese, • protect the community, • provide a mechanism for resolving complaints that church workers are not fit to hold office under undertake ministry, and • to facilitate the just, expedient and efficient resolution of complaints. 	To resolve allegations of unacceptable behaviour in a way that encourages reconciliation and leads to agreed outcomes that are fair and effective.
<i>Who can complaints be made about?</i>	Church workers (as defined in clause 5).	Church workers (as defined in clause 5).
<i>Who can make a complaint or allegation?</i>	Any person.	Any person.
<i>How does a person make a complaint/initiate the process?</i>	By contacting the Professional Standards Unit. (https://safeministry.org.au/contact/)	If the church worker is the Rector, by contacting the Regional Bishop. (https://sydneyanglicans.net/seniorclergy) In all other cases, by contacting the Rector of the church worker.
<i>Are church workers who are the subject of an allegation required to participate in the process?</i>	Yes. A church worker must cooperate with an investigation unless they have a reasonable excuse. If a church worker refuses to participate, the process will continue without them.	No. The process cannot be initiated unless the church worker agrees to participate.
<i>Role of complainant</i>	The complainant is not a party. Complainants cannot determine how the complaint progresses. They	The complainant is a party and is actively involved in determining how the matter progresses, subject to the terms of the Policy.

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Key Feature	Ministry Standards Ordinance 2017	Diocesan policy for dealing with allegations of unacceptable behaviour
	have limited access to information about the conduct of the process.	
<i>What types of complaints can be made?</i>	Complaints about conduct which, if established, would call into question the church worker's fitness for ministry. See the definition of 'Misconduct' in clause 6 for more detail.	Any conduct which falls short of the standard of behaviour expected of clergy and church workers. This standard is understood by reference to the definition of 'misconduct' in the MSO and the Faithfulness in Service code of conduct.
<i>Is there any subject matter that cannot be dealt with under the process?</i>	<p>Subject matter that does not call a church worker's fitness into question.</p> <p>Allegations of a breach of faith, ritual or ceremonial.</p> <p>Certain exclusions from the definition of 'misconduct'. (See clause 6(1)).</p> <p>Exempt conduct. (See Part 2B).</p> <p>Conduct that has previously been dealt with under a diocesan complaints process.</p> <p>Conduct that is under investigation by the police, a regulatory body or is the subject to legal proceedings will usually not be considered until those other processes or proceedings have been completed.</p>	<p>The Policy cannot be used for allegations concerning sexual misconduct, misconduct involving children, criminal conduct or professional misconduct.</p> <p>The Regional Bishop may also decide that allegations raise questions of fitness that are more appropriately dealt with under the MSO.</p>
<i>What form of investigation will be undertaken?</i>	If the complaint progress it will usually, but not always, be the subject of a formal investigation by an external investigator.	The Regional Bishop appoints a person to undertake an 'information gathering exercise'. This will usually be the Parish HR Partner or a Regional Archdeacon.
<i>How long does the process take from start to finish?</i>	The process aims to be expedient and efficient, but can be lengthy in practice. This is largely due to the need for a formal investigation and procedural fairness in the process. Some complaints can take in excess of 12 months to reach a final outcome	The process has few formal steps and is intended to be quick. Ultimately the parties will determine the timeliness of the process. The process will usually be terminated if there is no resolution within 3 months.
<i>What are the outcomes from the process?</i>	<p>An assessment is made as to whether the church worker should remain in their office or position or whether they should be subject to conditions or restrictions.</p> <p>In most cases this is determined by either the:</p> <p>(a) Professional Standards Committee if its recommendations are accepted and complied with by the church worker, or</p>	<p>Mutually agreed by the parties with the assistance of the Regional Bishop.</p> <p>If agreed outcomes cannot be reached, the complainant will still have the option of making a complaint under the MSO if the subject-matter can be dealt with under the MSO.</p>

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	<p>(b) if not, by the Professional Standards Board or Diocesan Tribunal.</p> <p>If the church worker is an unpaid lay person, an Adjudicator will be appointed to make a determination instead. The Adjudicator is usually a barrister or senior lawyer.</p> <p>The outcomes are implemented by the Archbishop or other Church Authority.</p>	
<i>Are the outcomes confidential?</i>	<p>Generally, yes. However the Archbishop and the PSC have power to release information.</p> <p>Parishioners are generally informed about the outcome of a complaint concerning a person on the staff of the parish.</p> <p>In some situations the outcomes will be published more broadly across the Diocese, such as where the person is subject to a prohibition order or another form of restriction on engaging in ministry.</p> <p>Certain allegations and findings may need to be referred to the police or to a government authority.</p>	<p>Generally, yes.</p> <p>Parishioners would only be told if this was agreed as an outcomes of the process.</p> <p>The PSU will be told when an allegation is made about a church worker but no other detail.</p> <p>Certain allegations may need to be referred to the police or to a government authority.</p>

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

R TONG
Chair of Committee

I Certify that this Ordinance was passed by the Synod of the Diocese of Sydney on 13 September 2022.

D GLYNN
Secretary

I Assent to this Ordinance.

BISHOP CHRIS EDWARDS
Commissary for Archbishop of Sydney

26/09/2022