

National Register (Access and Disclosure) Ordinance 2008

No 2, 2008

Long Title

An Ordinance to provide for access to and disclosure of information in the register established under the National Register Canon 2007 and for related matters.

The Standing Committee of the Synod of the Diocese of Sydney Ordains as follows.

1. Name

This Ordinance is the National Register (Access and Disclosure) Ordinance 2008.

2. Interpretation

In this ordinance –

“Access Protocol” means the protocol for access to and disclosure of information on the National Register made by the General Synod on 25 October 2007 under section 11 of the National Register Canon 2007.

“Archbishop” means the Archbishop of the Diocese or in his absence his Commissary or if the See is vacant the Administrator of the Diocese.

“Church authority” means the Archbishop or a person or body of the Diocese having authority to ordain, licence, elect, appoint, dismiss or suspend a member of the clergy or a layperson.

“Diocesan Representative” means the Archbishop or delegate or the Director of Professional Standards.

“Director of Professional Standards” means the person appointed for the time being under clause 101 of the Discipline Ordinance 2006.

“National Register” means the national register established under the National Register Canon 2007.

3. Extent of access to and disclosure of information to Church authorities

- (1) For the purposes of part 3 of the Access Protocol, the Diocesan Representative –
 - (a) is authorised to have access to any information in the National Register relating to a member of the clergy or a lay person on the written request of a Church authority referred to in a cell in column 1 of the Schedule, and
 - (b) may disclose whether there is any such, and if so what, information to that Church authority in the circumstances referred to in the corresponding cell or cells in column 2 of the Schedule.
- (2) Except as provided under subclause (1), any procedures of a Church authority which require access to information in the National Register have no force or effect.

4. No access for election of persons by Church authorities

For the avoidance of doubt and for the purposes of paragraph 14 of the Access Protocol, the procedures of the Diocese do not require or otherwise authorise the Director of Professional Standards to access any information in the National Register where a Church authority holds an election for which members of the clergy or lay persons are candidates.

5. Amendments to Discipline Ordinance 2006

The Discipline Ordinance 2006 is amended as follows –

- (a) insert as a new definition in clause 2 the following –

“National Register means the National Register established under the National Register Canon 2007.”, and
- (b) insert the following at the end of clause 16 –

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Note: *If the complaint is withdrawn, any information about the complaint included on the National Register may be removed from the Register under section 10(1) of the National Register Canon 2007.*, and

- (c) insert the following at the end of clause 17 –

Note: *Upon notifying the substance of the complaint to the person against whom the complaint is made, the complaint may become a notifiable complaint for the purposes of the National Register Canon 2007. In this case, section 8 of the Canon requires the Director to notify the General Secretary of certain information about the complaint for inclusion on the National Register within 1 month of having access to that information.*”, and
- (d) delete clauses 34(4)(b) and (c) and insert instead the following –
 - (b) that the complaint is false, vexatious or misconceived, or
 - (c) that it is more likely than not that the subject-matter of the complaint did not occur, or”, and
- (e) in the Note at the end of clause 34 –
 - (i) delete the matter **Note:**” and insert instead the following –

Notes:
(1)”, and
 - (ii) insert after the existing Note the following –

(2) If the PSC considers that the complaint is false, vexatious or misconceived or that it is more likely than not that the subject-matter of the complaint did not occur, any information about the complaint which has been included on the National Register may be removed from the Register under section 10(1) of the National Register Canon 2007 on the basis that it relates to a notifiable complaint which has been exhausted.”, and
- (f) insert a new clause 35(3) as follows –

(3) If any information about the complaint has been included on the National Register, the notice must indicate whether acceptance of the PSC’s recommendation will result in the information being removed from or retained on the National Register.”, and
- (g) in clause 65 –
 - (i) delete the heading and insert instead the following –

Other determinations in relation to complaints”, and
 - (ii) re-letter the existing clause as subclause (1) and insert a new subclause (2) as follows –

(2) In dealing with a complaint in respect of which information has been included on the National Register, a Tribunal must, after making any other declaration or recommendation that it is empowered to make, determine whether the complaint is false, vexatious or misconceived, or whether it is more likely than not that the subject-matter of the complaint did not occur.”, and
 - (iii) insert the following at the end –

Notes:
(1) *Section 39 of the Commission for Children and Young People Act 1998 imposes a duty on employers to notify the Commission for Children and Young People of certain*

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disciplinary proceedings taken against employees for causing harm to a child. However, there is an exemption from the requirement to notify if there has been a finding in the disciplinary proceedings that the allegations in respect of which they were brought were vexatious or misconceived (see clause 8 of the Commission for Children and Young People Regulation 2000) or the alleged conduct did not occur.

(2) If a Tribunal determines that the complaint is false, vexatious or misconceived or that it is more likely than not that the subject-matter of the complaint did not occur, any information about the complaint which has been included on the National Register may be removed from the Register under section 10(1) of the National Register Canon 2007 on the basis that it relates to a notifiable complaint which has been exhausted.”, and

(h) in clause 86 –

(i) insert a new clause 86(4) as follows –

“(4) If the Archbishop makes a declaration, any information disclosed to the Archbishop for the purposes the declaration is to be treated as Exempt Information for the purposes of the National Register Canon 2007.”, and

(ii) insert the following at the end –

“**Note:** Under section 8 of the National Register Canon 2007, Exempt Information is not information that is to be notified to the General Secretary for inclusion on the National Register.”

6. Cessation of Ordinance

This Ordinance ceases to have force and effect on the last day of the 1st ordinary session of the 48th Synod.

Schedule

Column 1	Column 2
Archbishop	Where the Archbishop proposes to ordain, or issue a licence to, or to appoint to a position within the Diocese, a member of the clergy or a lay person.
	Where a member of the clergy or a lay person applies for ordination, or the issue of a licence, or appointment to a position within the Diocese by the Archbishop.
	Where the Archbishop invites a member of the clergy or a lay person to apply for ordination, or the issue of a licence, or appointment to a position within the Diocese and the member of clergy or lay person expresses interest in making an application.

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

PG KELL
Chairman of Committees

I Certify that this Ordinance was passed by the Standing Committee of the Synod of the Diocese of Sydney on 18 February 2008.

R WICKS
Secretary

I Assent to this Ordinance.

PETER F JENSEN
Archbishop of Sydney
19/2/2008